



California Regulatory Notice Register

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MAY 9, 2008

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson West.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulation at a public hearing on or after **June 12, 2008**, at the offices of the Fair Political Practices Commission, 428 J Street, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **June 10, 2008**.

BACKGROUND/OVERVIEW

The Political Reform Act (the "Act") places certain restrictions on the receipt of gifts by public officials. The Act prohibits candidates and officials from receiving gifts of \$390 or more in a calendar year from any reportable source. A \$10 per month limit applies to gifts made to state officials by lobbyist or lobbying firms. In addition, the Act prohibits a public official from making, participating in making, or using his or her official position to influence a decision involving the donor of a gift valued at \$390 or more in a 12-month period where the decision will have a foreseeable and material financial effect on the donor. (Section 87103.) Finally, gifts are reportable at \$50 on the official's Statement of Economic Interest. In order to implement these requirements, the Commission has adopted a series of rules concerning valuation of gifts. However, there is no rule specific to the valuation of free air transportation.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. Section 18946.6:

Proposed Regulation 18946.6 applies a reasonable valuation method for free air transportation. Under the regulation, the value of an airplane ticket on a commercial aircraft is the actual cost of the ticket. The Commission will consider what types of flights or characteris-

tics the flight must have to insure that the actual cost reflects the actual value of the ticket.

Where the actual cost of the ticket or fare is not ascertainable because the flight is not on a commercial aircraft, the proposed regulation requires the official to determine the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size. The Commission will consider whether the entire value of the flight should be attributed to the official, or whether some pro ration method may be utilized.

Benefits received during the flight, such as food, beverages, or entertainment, the regulation reaffirms that the official must report the value of these benefits as separate gifts unless the value of such gifts is already included in the charter cost.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of these regulations is to implement, interpret, and make specific Government Code Sections 87207, 87302, and 89501 through 89506.

CONTACT

Any inquiries should be made to John W. Wallace, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916)

322–5660 or 1–866–ASK–FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.html?id=351>.

TITLE 5. SUPERINTENDENT OF PUBLIC INSTRUCTION

NOTICE OF PROPOSED RULEMAKING AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING TRUSTLINE REGISTRATION TO BE AN ELIGIBLE PROVIDER

[Notice published May 9, 2008]

NOTICE IS HEREBY GIVEN that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing beginning at **9:00 a.m. on June 27, 2008**, at 1430 N Street, Room 1801, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Strain, Regulations Coordinator
LEGAL DIVISION
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916–319–0155 or by e-mail to regcomments@cde.ca.gov. Comments must be re-

ceived by the Regulations Coordinator prior to **5:00 p.m. on June 27, 2008**.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

AUTHORITY AND REFERENCE

Authority: Section 8261, 8263, and 8269, Education Code.

References: Sections 8208.1, 8212, 8220, 8350.5, 8351, 8352, 8353, 8354, 8356, and 8358.5, Education Code; Sections 1596.70, 1596.607, 1596.605(a), 1596.608, 1596.67, 1596.792, 1596.796, and 1596.877, Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California *Health and Safety Code* sections 1596.60–1596.68 requires that child care providers who are exempt from licensure and not the child's grandparent, aunt, or uncle to be TrustLine registered to be eligible to receive a child care subsidy payment. Existing CalWORKs Stages 2 and 3 regulations require this type of provider to apply for TrustLine registry or be TrustLine registered.

These regulations will address one issue: TrustLine registration for applicable license-exempt providers of subsidized child care and development services.

The proposed regulations add two new sections (18224.6 and 18227) to the Alternative Payment program regulations (Division 1, Chapter 19, Subchapter 10) to clearly identify who qualifies as an eligible provider and what happens when a license-exempt provider becomes ineligible to provide child care and development services. The majority of section 18227 comes from the existing section 18074.2(a). The content of that section is modified to reflect the requirement for the license-exempt provider, who is not the child's grandparent, aunt, or uncle, to be TrustLine registered

to be considered an eligible provider for rendering subsidized child care and development services. TrustLine registration is a process by which persons, exempt from licensure, submit an application and their fingerprints. The fingerprints are checked by the Department of Justice (DOJ) against state and federal criminal records and child abuse records. Persons with a criminal or child abuse record are further screened by the California Department of Social Services (CDSS) Community Care Licensing Division. A person is entered into the TrustLine registry once they have been cleared by DOJ and CDSS. An accommodation is made to allow those providers currently receiving payment to continue to do so, while requiring that those who have not submitted both a completed TrustLine application and fingerprints to wait until they are TrustLine registered.

Similar modifications are made to the sections identifying eligible providers for CalWORKs Child Care (Division 1, Chapter 19.5, Subchapters 2 and 3) Stage 2, section 18411, and Stage 3, section 18428, and to sections 18409 and 18424 identifying the information needed when transferring a family from one CalWORKs child care agency to another.

DISCLOSURES REGARDING THE PROPOSED ACTION

The SSPI has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary costs or savings imposed on local educational agencies: None

Costs or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SSPI is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed amendments to the regulations do not affect small businesses because the regulations apply only to school districts and not to business practices.

CONSIDERATION OF ALTERNATIVES

The SSPI must determine that no reasonable alternative he considered or that has otherwise been identified and brought to his attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the content of this regulation should be directed to:

Cecelia Fisher-Dahms, Consultant
Child Development Division
California Department of Education
1430 N Street, Room 3410
Sacramento, CA 95814
Telephone: 916-322-4883
E-mail: cfisherd@cde.ca.gov

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SSPI has prepared an Initial Statement of Reasons for the proposed regulation and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr/>.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR ANY
INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Cecelia Fisher-Dahms, Child Development Division, 1430 N Street, 3rd Floor, Sacramento, CA, 95814; telephone, 916-322-4883; fax, 916-323-6853. It is recommended that assistance be requested at least two weeks prior to the hearing.

TITLE 14. FISH AND GAME
COMMISSION

Notice of Proposed Changes in Regulations

(Continuation of California Notice Register 2008,
No. 9-Z, and Meetings of February 8, March 7,
April 11 and April 15, 2008.)

NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See the text of this notice—changes are shown in **bold type**.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215 and 316.5 of said Code, proposes to amend subsections (b)(5), (b)(12.5), (b)(18.5)(B), (b)(43.5), (b)(59.5), (b)(68), (b)(118)(B), (b)(124), (b)(129)(B), (b)(156), (b)(168.5), (b)(186)(B), (b)(198)(E), and (b)(212)(A) of Section 7.50, Title 14, California Code

of Regulations, relating to Central Valley Chinook Salmon Sport Fishing.

UPDATED INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean salmon fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). These recommendations coordinate west coast management of sport and commercial ocean salmon fisheries in the Federal fishery management zone (3 to 200 miles offshore) off the coasts of Washington, Oregon, and California.

The text in bold below replaces the text from original Initial Statement of Reasons and Informative Digest.

PFMC FINAL ACTION

The PFMC has determined that the Sacramento River Fall Chinook (SRFC) merits further protection as the stocks are projected to be at a record low abundance level in 2008. The projected 2008 SRFC escapement to the Central Valley is 59,000 SRFC adults and assumes no further fishing in 2008.

The National Marine Fisheries Service (NMFS) has determined that poor ocean conditions are a major factor of the low 2008 SRFC abundance. The NMFS also expects these poor conditions to continue affecting subsequent years' SRFC escapements in the near future. The 2008 projected SRFC adult escapement is 52% below the lower boundary of the FMP conservation goal of 122,000 to 180,000 SRFC adult escapement, and the state and federal SRFC mitigation hatcheries are also projected to fall below the 22,000 SRFC needed to meet the annual egg take goals.

On March 14, 2008, the PFMC approved three regulatory options for public review which provided harvest recommendations for the Central Valley salmon recreational fishery in response to the projected low 2008 SRFC escapement. The three PFMC options are shown below:

- 1) **Option 1— a 1,000 adult SRFC quota for the Central Valley salmon recreational fishery; and**
- 2) **Options 2 and 3 — no retention of adult SRFC in the Central Valley salmon recreational fishery.**

The PFMC adopted Option 3 on April 10, 2008 which requires no retention of adult SRFC in the Central Valley salmon recreational fishery.

CENTRAL VALLEY SALMON REGULATORY OPTIONS

In response to the PFMC action, the Department is proposing a zero salmon bag limit in the 14 originally proposed Central Valley rivers and streams for discussion, except for very limited salmon fisheries in the American, Feather and Sacramento rivers where the following three fishery options are proposed for Commission consideration.

1. Option 1 provides salmon fishing with a one salmon bag limit in the American and Feather rivers from January 1 through July 15 to provide limited access to spring Chinook and the Sacramento River from Red Bluff Diversion Dam to Knights Landing from November 1 to December 31 to provide limited access to late-fall Chinook.
2. Option 2 provides salmon fishing with a one salmon bag limit in the American and Feather rivers from February 1 through July 15 to provide limited access to spring Chinook and the Sacramento River from Red Bluff Diversion Dam to Knights Landing from November 1 to December 31 to provide limited access to late-fall Chinook.
3. Option 3 is a zero bag limit in all areas of the American, Feather and Sacramento rivers. This option will provide maximum protection to SRFC in the American, Feather and Sacramento rivers, but allows no access to non-fall salmon stocks.

The Department is proposing these very limited options based upon the following information.

1. The 2000–2003 mean coded–wire–tag (CWT) data for creel sampling shows approximately 128 SRFC in the American River, approximately 150 SRFC in the Feather River and 0 SRFC in the Sacramento River were recovered during the dates and locations of the proposed options.
2. The 2000–2004 CWT data for carcass surveys and hatchery returns shows no SRFC were recovered in the American and Feather Rivers during the dates and locations of the proposed options.

3. The SRFC CWTs recovered in the American River were from Feather River strays where past Feather River Hatchery practices resulted in mixed fall and spring stocks.

PROPOSED REGULATION REVISIONS

The proposed revisions from current regulations are discussed in the following paragraphs:

In all options, the following revisions are proposed:

The phrase “king salmon” is proposed to be changed to “salmon” in the bag limits of subsections 7.50(b)(5), (68) and (129) to standardize terminology within subsection 7.50(b). Only Chinook (king) salmon are allowed to be retained within the state’s anadromous waters.

The date of February 28 in subsection 7.50(b)(212)(A) is proposed to be changed to the last day in February to include February 29 during leap years.

As originally proposed, the Department is recommending a zero salmon bag limit for the following 11 Central Valley rivers and streams to provide protection for SRFC and other fall Chinook stocks:

1. Auburn Ravine Creek, subsection 7.50(b)(12.5)
2. Bear River, subsection 7.50(b)(18.5)(B)
3. Coon Creek, subsection 7.50(b)(43.5)
4. Dry Creek, subsection 7.50(b)(59.5)
5. Merced River, subsection 7.50(b)(118)(B)
6. Mokelumne River, subsection 7.50(b)(124)(A) and (B)
7. Napa River, subsection 7.50(b)(129)(B)
8. San Joaquin River, subsection 7.50(b)(168.5)
 - a. Subsection (A)
 - b. Subsection (B) and (C) from January 1 to October 31
9. Stanislaus River, subsection 7.50(b)(186)(B)
10. Tuolumne River, subsection 7.50(b)(198)(E)
11. Yuba River, subsection 7.50(b)(212)(A) from January 1 to the last day in February and August 1 through October 15.

Additional minor changes were made to the regulations for clarity and to reduce public confusion.

Option 1 for the American, Feather, and Sacramento rivers

Feather River, subsection 7.50(b)(68)(E) is proposed to end at the Highway 99 bridge near Nicolaus and a new subsection (F) will be added from the Highway 99 bridge to the Feather River mouth. The new subsection will allow closure of the Feather River mouth along with adjacent Sacramento River closures for enforcement purposes.

Sacramento River, subsection 7.50(b)(156)(J) is proposed to end at the Highway 113 bridge near Knights Landing and a new subsection (K) will be added from the Highway 113 bridge to the Carquinez Bridge. The new subsection will allow a year-round zero salmon bag limit on the Sacramento River from the Highway 113 bridge to the Carquinez Bridge to provide protection for SRFC.

For the subsections 7.50(b)(5)(A) through (D), (68)(C) through (E) and (156)(H) and (J), the open seasons are proposed to be re-aligned by date starting with January 1 for regulation clarity and to reduce public confusion.

The following areas are recommended for a zero salmon bag limit to provide protection for SRFC:

1. American River, subsection 7.50(b)(5)
 - a. Subsections (A) and (D) from July 16 to December 31
 - b. Subsection (B) from July 16 to September 14
 - c. Subsection (C) from July 16 to October 31
 - d. Subsection (E) from January 1 to December 31
2. Feather River, subsection 7.50(b)(68)
 - a. Subsections (C) and (D) from July 16 to December 31
 - b. Subsection (E) from March 1 to December 31
 - c. New subsection (F) from January 1 to December 31
3. Sacramento River, subsection 7.50(b)(156)
 - a. Subsection (H) from January 1 to December 31
 - b. Subsection (J) from January 1 to October 31
 - c. New subsection (K) from January 1 to December 31

The following areas are proposed to remain open with a bag limit of one salmon to access spring Chinook:

1. American River, subsection 7.50(b)(5)
 - a. Subsections (A) through (D) from January 1 to July 15
2. Feather River, subsection 7.50(b)(68)
 - a. Subsections (C) and (D) from January 1 to July 15
 - b. Subsection (E) from January 1 to the last day in February

The following areas are proposed to remain open with a bag limit of one salmon to access late-fall Chinook:

1. Sacramento River, subsection 7.50(b)(156)

- a. Subsection (J) from November 1 to December 31

Option 2 for the American, Feather, and Sacramento rivers

Feather River, subsection 7.50(b)(68)(E) is proposed to end at the Highway 99 bridge near Nicolaus and a new subsection (F) will be added from the Highway 99 bridge to the Feather River mouth. The new subsection will allow closure of the Feather River mouth along with adjacent Sacramento River closures for enforcement purposes.

Sacramento River, subsection 7.50(b)(156)(J) is proposed to end at the Highway 113 bridge near Knights Landing and a new subsection (K) will be added from the Highway 113 bridge to the Carquinez Bridge. The new subsection will allow a year-round zero salmon bag limit on the Sacramento River from the Highway 113 bridge to the Carquinez Bridge to provide protection for SRFC.

For the subsections 7.50(b)(5)(A) through (D), (68)(C) through (E) and (156)(H) and (J), the open seasons are proposed to be re-aligned by date starting with January 1 for regulation clarity and to reduce public confusion.

The following areas are recommended for a zero salmon bag limit to provide protection for SRFC:

1. American River, subsection 7.50(b)(5)
 - a. Subsections (A) and (D) from January 1 to January 31 and July 16 to December 31
 - b. Subsection (B) from January 1 to January 31 and July 16 to September 14
 - c. Subsection (C) from January 1 to January 31 and July 16 to October 31
 - d. Subsection (E) from January 1 to December 31
2. Feather River, subsection 7.50(b)(68)
 - a. Subsections (C) and (D) from January 1 to January 31 and July 16 to December 31
 - b. Subsection (E) from January 1 to January 31 and March 1 to December 31
 - c. New subsection (F) from January 1 to December 31
3. Sacramento River, subsection 7.50(b)(156)
 - a. Subsection (H) from January 1 to December 31
 - b. Subsection (J) from January 1 to October 31
 - c. New subsection (K) from January 1 to December 31

The following areas are proposed to remain open with a bag limit of one salmon to access spring Chinook:

1. American River, subsection 7.50(b)(5)

- a. Subsections (A) through (D) from February 1 to July 15
2. Feather River, subsection 7.50(b)(68)
 - a. Subsections (C) and (D) from February 1 to July 15
 - b. Subsection (E) from February 1 to the last day in February

The following areas are proposed to remain open with a bag limit of one salmon to access late-fall Chinook:

1. Sacramento River, subsection 7.50(b)(156)
 - a. Subsection (J) from November 1 to December 31

Option 3 for the American, Feather, and Sacramento rivers

This option provides maximum protection to SRFC in the American, Feather and Sacramento rivers, but allows no access to non-fall salmon stocks.

The following areas are recommended for a zero salmon bag limit:

1. American River, subsection 7.50(b)(5)
 - a. Subsections (A) and (D) for all year
 - b. Subsection (B) from January 1 to September 14
 - c. Subsection (C) from January 1 to October 31
 - d. Subsection (E) from July 16 to December 31
2. Feather River, subsections 7.50(b)(68)
 - a. Subsection (C) from January 1 to last day of February, March 1 through July 15 and July 16 to September 30
 - b. Subsection (D) from March 1 through July 15 and July 16 through the last day in February
 - c. Subsection (E) from July 16 through the last day in February
3. Sacramento River, subsection 7.50(b)(156)
 - a. Subsection (H) from August 1 through August 30 and August 31 through January 14
 - b. Subsection (J) from July 16 to December 31

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Beach Resort Monterey, La Grande Room, 2600 Sand Dunes Drive, Monterey, CA, on Friday, May 9, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to

FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on May 7, 2008. All comments must be received no later than May 9, 2008, at the hearing in Monterey, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Mr. Neil Manji, Branch Chief, Fisheries Branch, Department of Fish and Game, phone (916) 327-8840, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following ini-

tial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Under a normal season, Central Valley sport salmon anglers contribute about \$14,500,000 in direct revenues to the State's business sector. This is based on a 2006 US Fish and Wildlife national survey of fishing, hunting, and wildlife associated recreation for California. Adding the indirect and induced effects of this initial revenue contribution and the total benefit to California's economy is normally about \$20,300,000. This is equivalent to about \$7,800,000 in total wage earnings to Californians, or about 166 jobs in the state. Depending on which of the following three options that the Commission adopts, the following statewide impacts to businesses may occur.

Option 1 would result in an 87.3 percent reduction in the available angling days of the Central Valley salmon recreational fishing under normal fishing season. Using national data on recreational angler expenditures on goods and services, we estimate the direct loss to the business community of about \$12,600,000. Because of the indirect and induced effects of this loss, California's total economic output is estimated to be reduced \$17,700,000. Adverse impacts to total wage earnings and California jobs would be about \$6,800,000 and 145, respectively.

Option 2 would result in an 89.0 percent reduction in the available angling days of the Central Valley salmon recreational fishing under normal fishing season. Using national data on recreational angler expenditures on goods and services, the direct loss to the business community is estimated to be about \$12,900,000. Because of the indirect and induced effects of this loss, California's total economic output is estimated to be reduced \$18,100,000. Adverse impacts to total wage earnings and California jobs would be about \$6,900,000 and 147, respectively.

Option 3 would result in a 100 percent reduction in the available angling days of the Central Valley salmon recreational fishing under normal fishing season. Using national data on recreational angler expenditures on goods and services, the direct loss to the business community is estimated to be about \$14,500,000. Because of the indirect and induced effects of this loss, California's total economic output is estimated to be reduced \$20,300,000. Adverse impacts to total wage earnings and California jobs would be about \$7,800,000 and 166, respectively.

The Commission has made an initial determination that the amendment of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
 - (ii) consolidation or simplification of compliance and reporting requirements for businesses;
 - (iii) the use of performance standards rather than prescriptive standards; or
 - (iv) exemption or partial exemption from the regulatory requirements for business.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Option 1 would result in an 87.3 percent reduction in the available angling days of the Central Valley salmon recreational fishing under a normal season. On a pro-rata basis, reducing the estimated business output for the State by this same percentage could result in a reduction of 145 jobs.

Option 2 would result in an 89.0 percent reduction in the available angling days of the Central Valley salmon recreational fishing under a normal season. On a pro-rata basis, reducing the estimated business output for the State by this same percentage could result in a reduction of 147 jobs.

Option 3 would result in a 100 percent reduction in the available angling days of the Central Valley salmon recreational fishing under a normal season. On a pro-rata basis, reducing the estimated business output for the State by this same percentage could result in a reduction of 166 jobs.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. **There are no new reporting requirements imposed as a result of the proposed regulations.**

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

There are no new reporting requirements to State agencies as a result of the proposed regulations. However, reduced recreational fishing opportunities would likely result in revenue impacts to the State, estimated to be up to \$1,819,069. This is due to reduced demand for recreational fishing licenses, permits, and/or stamps, normally purchased from the State, increased enforcement, and outreach and education about the 2008 inland salmon season.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 710.7, 711, 713, 1050, 8591, 8841 and 8842, of the Fish and Game Code and to implement, interpret or make specific sections 710.7, 711, 1050, 1700, 7852.2, 7858, 8101, 8140, 8590, 8591, 8593, 8594, 8595, 8606, 8841 and 8842, of said Code, proposes to amend sections 120 and 120.3, repeal Section 120.01, and add sections 120.1 and 120.2, Title 14, California Code of Regulations, relating to prawn and shrimp trawling.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Amendments to Section 120, Title 14, CCR, Re: Prawn and Shrimp Trawling.

Considerable substantive and organizational changes to this Section are proposed to update the language so it specifies the current requirements for commercial prawn and shrimp trawling. This Section of Title 14 was established in 1976, and has been amended several times since 2003 in various regulatory actions that were piecemeal in nature. Due to numerous changes to Fish and Game Code statutes and regulation sections that govern both trawl fishing activity and requirements specific to a particular prawn or shrimp fishery, the regulations of Section 120 are now antiquated and must be updated to specify and consolidate the current requirements that apply to all prawn and shrimp trawling off California.

Section 120 would be renamed to "Prawn or Shrimp Trawling — General Provisions" to make clear that the regulations in the Section apply generally, and are enacted pursuant to the Fish and Game Commission's expanded regulatory authority over bottom trawling for prawns and shrimp provided in Section 8841 of the Fish and Game Code. Regulations in Section 120 which pertain exclusively to the pink shrimp trawl fishery would be removed and relocated either to Section 120.1, regarding pink shrimp trawling, or to Section 120.2, regarding pink shrimp trawl permits.

The following specific modifications, deletions, and additions to Section 120 are proposed:

A. General Provisions. Presently, the Department issues fishery-specific commercial fishing permits for northern pink shrimp, southern pink shrimp, and golden and ridgeback prawn, and the general regulations of this Section would apply to all of these fisheries. The regulations would make clear that prawns and shrimp may only be taken by trawl nets for commercial purposes pursuant to Fish and Game Code statutes and sections 120 through 120.3 of Title 14, and under authority of one or more of the aforementioned commercial fishing permits. Take of spot prawns would continue to be prohibited using trawl nets except as specified when incidental to other trawl fishing activity.

B. Fishing Areas. Regulations in sections 120, 120.01 and 120.3 presently specify trawl areas or zones that are open and closed to trawl fishing for one or more species of shrimp or prawns. These regulations would be repealed, and language would be added to specify that trawling for shrimp or prawns is allowed only in those waters authorized by Section 8842 of the Fish and Game Code and not otherwise prohibited by other state or federal statutes or regulations.

The Commission did not make the finding required by subsection 8842(d) of the Fish and Game Code which would have allowed continued pink shrimp trawl fishing in the area two to three miles offshore between False Cape and Point Reyes; therefore, this area closed to pink shrimp trawl fishing on January 1, 2008. The proposed regulations reflect this statutory change.

C. Net Specifications. Present regulations of Section 120 would be updated to reflect that the required net to be used for the capture of shrimp or prawns is an otter trawl, and that beam trawls are no longer authorized (pursuant to Section 8830 of the Fish and Game Code). Additionally, regulations defining the requirement for Bycatch Reduction Devices (BRDs) in the pink shrimp fishery would be removed from Section 120 and relocated to Section 120.1, which would specify regulations that pertain exclusively to pink shrimp fishing activities.

The language of existing subsections 120(g)(2) and (3) and 120.3(f) would be combined and re-drafted to clarify that while prawn or shrimp trawling, no other fishing net or web, the meshes of which are less than that prescribed in these regulations, may be possessed on the vessel.

D. Observers and Inspections. Regulations would be updated and consolidated to make clear that all shrimp and prawn gear is subject to inspection, and observation of fishing activities aboard a permittee's boat by the Department or its representative is authorized at any time pursuant to Section 105.5, Title 14, CCR. Additionally, pursuant to Fish and Game Code subdivision 8841(d), any vessel fishing for prawns or shrimp permitted by California is subject to the requirements and policies of the federal groundfish observer program.

E. Incidental Catch Provisions. Existing regulations in subsections 120(h) and 120.3(g) specify provisions that allow for take of fish at prescribed limited levels incidental to a target trawl fishery. However, historically these various regulations have not been able to, nor can they currently, keep pace with changes to authorized limits on west coast groundfish established in federal regulations. The existing regulatory language is confusing in light of these other rules and has prompted numerous questions by both fishing industry members and Department enforcement staff. Additionally, changes to incidental catch provisions for spot prawn, a species for which take using trawl gear has been prohibited since 2003, are needed. Existing regulations which still provide for incidental catch in the directed spot prawn fishery are no longer necessary or appropriate now that this trawl fishery has been discontinued.

The revised incidental catch regulations are proposed to specify the following allowances and restrictions on specific types of catch that is taken incidentally to directed trawling activities:

- (1) Finfish. Limits on the incidental take of west coast groundfish species would be those specified in federal regulations of Title 50 CFR Part 660, and which apply to state-managed trawl fisheries,

including prawn or shrimp trawl fisheries, pursuant to Section 189, Title 14, CCR. Salmon may be taken and possessed incidentally to prawn or shrimp trawl fishing activities subject to sections 8210.2 to 8226, and 8230 to 8237, inclusive, of the Fish and Game Code.

- (2) Sea Cucumbers. Any amount of sea cucumbers taken incidentally while prawn or shrimp trawling may be possessed if the owner or operator of the vessel possesses a permit to take sea cucumbers pursuant to Section 8405 of the Fish and Game Code.
- (3) Spot prawns. Spot prawns would continue to be prohibited as incidental catch in the pink shrimp fishery. Trawl loads of ridgeback and golden prawns which incidentally take spot prawn could not contain more than 50 pounds without restriction or 15 percent, by weight, of spot prawns. Trawl loads of finfish which incidentally take spot prawn could not contain more than 50 pounds without restriction or 15 percent, by weight, of spot prawns.

F. Records. Each prawn or shrimp trawl permittee, or the operator of a permitted vessel, would continue to be required to complete and submit logbooks of fishing activity.

G. Permit Revocation and Violations. Regulations specifying provisions for permit revocation and violations of prawn and shrimp trawl permit conditions would be updated to provide Department enforcement officers, License and Revenue Branch and the Commission with increased flexibility relative to penalties for violations. Regulations would allow, pursuant to Fish and Game Code subdivision 1052(b), any prawn or shrimp trawl permit to be revoked if the applicant or permittee submits false information for the purposes of obtaining or renewing a permit. Additionally, any prawn or shrimp trawl permit may be suspended, revoked or cancelled by the Commission pursuant to subdivision 7857(b) of the Fish and Game Code, upon notice by the Department of a violation by a permit holder, or any person acting under authority of his or her permit, of provisions of the Fish and Game Code or regulations of the Fish and

Game Commission relating to shrimp, prawns, trawl gear, and times or areas closed to fishing. Any prawn or shrimp trawl permittee would also be liable for any violations committed by him or her of provisions of the Fish and Game Code or regulations of the Fish and Game Commission relating to shrimp, prawns, trawl gear, and times or areas closed to fishing. The permit holder would also be liable for violations committed by any other person operating under the authority of his or her permit. Additionally, any such other person would be liable for his or her own violations.

H. Deletion of Reference to Cowcod Closure Areas — Existing subsection 120(d) prohibits prawn and shrimp trawling in the cowcod closure areas. This regulation was added at a time when spot prawn trawling was still authorized by the Commission, and is no longer necessary to be included in state regulations defining prawn and shrimp trawling areas based on changes in management authorities. NOAA Fisheries now prescribes rules for non-groundfish trawl fisheries using its regulatory authority over west coast groundfish, which include California's prawn and shrimp trawl fisheries. These federal rules apply in waters 3–200 miles from shore, and California conforms to these rules for state waters per Section 189 of Title 14. Federal regulations currently prohibit prawn and shrimp trawl activities in the cowcod areas, which exist primarily in federal waters off southern California. Additionally, federal groundfish regulations prescribe not only closed areas, but also seasons, depth constraints and bycatch limits for California's non-groundfish trawl fisheries.

I. Deletion of Reference to Permits to Transport Nets Through Closed Areas — Existing text of subsections 120(g)(1) and (g)(6) refer to a permit which the Department may issue to allow for transport of prawn or shrimp trawl nets through closed areas. This language was likely established many years ago prior to the closure of most state waters to trawling, when fewer enforcement tools were available to officers. The Department presently does not issue such transit permits and does not intend to develop such a permit program.

2. Add Section 120.1, Title 14, CCR, Re: Pink Shrimp Trawling.

Present regulations of Section 120.01, which is titled "Pink Shrimp Trawling," instead actually specify provisions which pertain to northern and southern pink shrimp permits. That Section would be repealed, and Section 120.1 would be added to include only those regulatory provisions that apply exclusively to pink shrimp trawl fishing activity. Most of the content of the regulations that would be added into Section 120.1 is presently found throughout the existing language of Section 120, and would be relocated to this stand-alone section to improve organizational clarity.

A. Permit Required. Pink shrimp trawl permits would continue to be required, but would be issued pursuant to Section 120.2 rather than Section 120, as previously described.

B. Season. The pink shrimp commercial fishing season would continue to be April 1 through October 31.

C. Bycatch Reduction Device (BRD) Required. Regulations would continue to specify that all pink shrimp trawlers must be equipped with and use an approved BRD in pink shrimp fishing operations anywhere off California. Approved BRDs would continue to include the Rigid Grate (such as the Nordmore Grate), and the Soft Panel and Fisheye Excluders, and the design specifications detailed in current regulations would remain. Language would be added to make clear that the rigid grate may be hinged to facilitate rolling over a net reel. Regulations which previously allowed for the Department's Marine Regional Manager to issue experimental BRD permits meeting certain design criteria would be repealed, however, regulations would instead provide that upon approval by the Commission, an experimental gear permit could be issued by the Department for purposes of testing the effectiveness of new or improved BRD designs pursuant to Fish and Game Code Section 8606.

Current BRD regulations that allow for dismantling of BRDs while fishing to perform tests on the escapement of fish and loss of prawns during certain times of day would be repealed, as the three authorized types of BRDs have already undergone extensive performance testing in other states. Data from these studies have already been

analyzed and applied toward development of BRD regulations at both the state and federal levels.

D. Net Removal. Regulations prohibiting removal of shrimp trawl nets from the vessel prior to the offloading of pink shrimp would be maintained.

E. Maximum Count per Pound. Regulations prescribing a maximum number of pink shrimp per pound, a rule that is similar to a minimum size limit, would be modified slightly in keeping with the intent of the provision. No vessel would be authorized to land a load of pink shrimp having an average count greater than 160 shrimp per pound.

3. Content of Existing Section 120.01, Title 14, CCR, Re: Pink Shrimp Trawling, Would be Repealed and Relocated to New Section 120.2, and Renamed.

Present regulations of Section 120.01 pertain to northern and southern pink shrimp permits, and include permit issuance provisions, vessel length endorsements, permit renewal provisions, transfers, appeals, fees, and capacity goals. These regulations would remain largely intact and relocated to new Section 120.2, with the following proposed changes:

A. Name Change. The name of the Section would be changed from "Pink Shrimp Trawling" to "Pink Shrimp Trawl Permits" to more accurately reflect the content of the regulations within the Section.

B. Permit Renewal and Appeal Provisions. Existing Northern Pink Shrimp Permit provisions would be amended to conform to new specifications in Section 7852.2 of the Fish and Game Code, regarding renewal late fees, late fee deadlines, and appeal provisions, as established by AB 1144 (Ch. 279, Stats. 2007).

New language in Section 7852.2 of the Fish and Game Code, effective April 1, 2008, provides as follows:

Notwithstanding any other provision of law, a commercial fishing license, stamp, permit, or other entitlement for which there is a renewal deadline shall not be renewed after that deadline, except as follows:

(a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after

the deadline, according to the following schedule:

(1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).

(2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).

(3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).

(b) The department shall not waive the applicable late fee. The late fees specified in this section are applicable beginning in the 2008 license year, and shall be adjusted annually thereafter pursuant to Section 713.

(c) The department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

(d) An applicant who is denied renewal of a late application may submit a written appeal for renewal to the commission within 60 days of the date of the department's denial. The commission, upon consideration of the appeal, may grant renewal. If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a).

The updated permit regulations would specify that applicants for northern pink shrimp trawl permits must have held a valid northern pink shrimp trawl permit in the immediately preceding permit year and that all applications for northern pink shrimp trawl permit renewal shall be received by the Department or, if mailed, postmarked not later than April 30 each year. Late fees, late fee deadlines, and late renewal appeal provisions for Northern Pink Shrimp Trawl Permits would be those specified in Fish and Game Code Section 7852.2.

4. Changes to Section 120.3, Title 14, CCR, Re: Golden, Spot and Ridgeback Prawn Trawling for Clarity and Improved Organization.

Much of the existing content of Section 120.3, pertaining to golden and ridgeback permits and fishing would be consolidated into the general provisions described in Section 120 above, and therefore is proposed for removal from this

Section. Regulations defining fishing areas are no longer consistent with prawn and shrimp trawl fishing areas authorized pursuant to Fish and Game Code Section 8842, and would be eliminated under the proposed changes.

The scientific name for ridgeback prawn, *Sicyonia ingentis*, is proposed for correction, as the regulations presently refer to the incorrect genus for this species.

Permits to use or possess trawl nets for the taking of golden prawns and ridgeback prawns in ocean waters would continue to be required by this Section. Take of spot prawn under authority of this permit would continue to be prohibited, except for authorized incidental catches. Permit applicants would continue to be required to be licensed commercial fishermen and operators of currently registered commercial fishing vessels.

Regulations would be reconfigured to make clear that trawling for ridgeback prawns is prohibited from June 1 through September 30. Golden and ridgeback trawl gear specifications, including minimum mesh size requirements, would remain intact in this Section under the proposed amendments.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Beach Resort Monterey, La Grande Room, 2600 Sand Dunes Drive, Monterey, California, on Friday, May 9, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Department of Education, State Board Room 1430 N Street, Room 1101, Sacramento, California, on Friday, June 27, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 20, 2008 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on June 24, 2008. All comments must be received no later than June 27, 2008, at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box

944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Marija Vojkovich, Regional Manager of the Marine Region, telephone (805) 568–1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The changes are needed for clarity and for consistency with new statutory provisions.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**TITLE 17. CALIFORNIA AIR
RESOURCES BOARD**

**NOTICE OF PUBLIC HEARING TO
CONSIDER ADOPTION OF PROPOSED
AMENDMENTS TO THE CALIFORNIA
CONSUMER PRODUCTS REGULATIONS**

The Air Resources Board (Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Regulation for Reducing Volatile Organic Compound (VOC) Emissions from Consumer Products.

DATE: June 26, 2008

TIME: 9:00 a.m.

PLACE: California Environmental Protection
Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two day meeting of the Board, which will commence at 9:00 a.m., June 26, 2008, and may continue at 8:30 a.m., June 27, 2008.

This item may not be considered until June 27, 2008. Please consult the agenda for the meeting, which will be available at least 10 days before June 16, 2008, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disc. Please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at (916) 323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94508, 94509, 94510, 94512, 94513 and 94515, title 17, California Code of Regulations.

Background:

Section 41712 of the California Health and Safety Code requires ARB to adopt regulations to achieve the maximum feasible reduction in VOC emissions from consumer products. As part of the regulatory process, ARB must determine that adequate data exist for it to adopt the regulations. ARB must also determine that the regulations are technologically and commercially feasible, and necessary to carry out the Board's responsibilities under Division 26 of the Health and Safety Code. In addition, Health and Safety Code section 41712(c) provides that no regulation shall be adopted which requires the elimination of a product form. Section 41712 is primarily directed at attaining the State and federal ozone standards.

Pursuant to Health and Safety Code section 41712, ARB has adopted the Regulation for Reducing VOC Emissions from Consumer Products (the "Consumer Products Regulation") title 17, CCR, sections 94507-94517.

On September 25, 2007, ARB adopted the State Strategy for California's 2007 State Implementation Plan (2007 SIP). The 2007 SIP serves as California's overall plan to provide the emission reductions necessary to meet the federal ozone standard of 0.08 parts per million averaged over eight hours. As part of the 2007 SIP, ARB has committed to an additional 30 to 40 ton per day VOC reduction from consumer products by 2014. Under the commitment, rulemakings are to occur in 2007 and 2008 with reductions occurring in the 2010 to 2012 timeframe. Further rulemakings between 2010 and 2012, with implementation dates between 2012 and 2014, are to complete the emission reduction commitment. Achieving additional VOC reductions from con-

sumer products is an important element of the SIP and is necessary to attain State and federal air quality standards.

In 2006, Assembly Bill 32, The California Global Warming Solutions Act of 2006 (AB 32) was signed into law. This law created a comprehensive, multi-year program to reduce global warming compound emissions in California, with the overall goal of restoring emissions to 1990 levels by 2020. Assembly Bill 32 added section 1. division 25.5 (commencing with section 38500) to the Health and Safety Code.

Assembly Bill 32 additionally recognizes that immediate progress in reducing GHG emissions can and should be made. In October 2007, the ARB approved a list of early action GHG reduction measures. A subset of these early action measures was identified as Discrete Early Action Measures. Discrete Early Actions are Board adopted regulations to reduce GHG emissions, which are to be legally effective by January 1, 2010. One of the approved Discrete Early Action Measures, designated in the Early Action Report, pertains to reducing the use of compounds with high global warming potentials in consumer products. The consumer products measure is estimated to achieve an emission reduction equivalent to reducing 0.25 million metric tons of carbon dioxide per year.

Description of Proposed Regulatory Action

The proposed regulatory action would amend the existing Consumer Products Regulation by adding and modifying product category definitions and by establishing new or lower VOC limits for multiple categories. For some of the categories, separate VOC limits are specified for different product forms. All of these VOC limits, except one, are specified as percent by weight VOC. For one category, staff is proposing a grams of VOC per use limit. This mass limit is proposed for fabric softener products used in clothes dryers. An additional proposal would remove the "grandfather" clause that pertains to Personal Fragrance Products with 20 percent or less fragrance. Removing this clause would require all Personal Fragrance Products with 20 percent or less fragrance to meet a single VOC limit. The new or modified VOC limits would become effective between December 31, 2010 and December 31, 2015. These amendments would partially fulfill the consumer products SIP commitment.

The proposed amendments would also reduce the use of compounds with high global warming potential in Pressurized Gas Duster products. These products could only use compounds with (GWP) factors below 150. As proposed, the GWP values used to determine compliance are those set forth in the Intergovernmental Panel on Climate Change, Second Assessment Report, or if applicable, the Fourth Assessment Report.

A modification to the definition of VOC is also being proposed. This modification would exclude hydrofluoroether 7200 from the definition based on its negligible impacts on ground-level ozone formation.

The proposed regulatory action would also prohibit the use of the toxic air contaminants methylene chloride, perchloroethylene, and trichloroethylene in Carpet/Upholstery Cleaner, Fabric Protectant, Multi-Purpose Lubricant, Penetrant, Sealant or Caulking Compound, and Spot Remover. Use of methylene chloride and perchloroethylene would also be prohibited in Pressurized Gas Dusters.

In addition, a number of other modifications or clarifications are proposed. These include modifications to product date-coding requirements, product “sell-through” provisions, requirements for dilutable products, reporting requirements, and additional labeling requirements for certain specified categories. A number of minor changes are also proposed to various provisions of the regulation in order to correct errors or improve clarity.

COMPARABLE FEDERAL REGULATIONS

The U.S. Environmental Protection Agency (U.S. EPA) has promulgated a national consumer products rule under section 183(e) of the federal Clean Air Act: *National Volatile Organic Compound Emission Standards for Consumer Products*. (40 CFR Part 59, subpart C, sections 59.201 *et seq.*) The rule specifies VOC limits for a number of consumer product categories, and is similar in format to ARB’s consumer products regulation. In the summer of 2006, U.S. EPA began work on amendments to their existing national consumer products rules. Their amendments are based on amendments to California’s Consumer Products Regulation that occurred in 2004. In that rulemaking, VOC limits for 15 categories were adopted. U.S. EPA’s amendments are expected to become effective on January 1, 2009.

Although the national regulation is similar in many aspects to the California regulation, it is less effective in reducing VOC emissions from consumer products. The U.S. EPA’s rule does not regulate a number of product categories that are currently regulated under the ARB regulation. For the categories that are regulated under both rules, many of ARB’s limits are more stringent than the U.S. EPA’s limits. The existing national regulation achieves a 20 percent reduction in VOC emissions, while California’s existing Consumer Products Regulation has already achieved a 50 percent emission reduction in the regulated categories. Because California has unique air quality problems, we must reduce VOC emissions from all categories, including consumer products, to the maximum extent feasible, to attain the

federal and State ambient air quality standards for ozone.

The U.S. EPA’s rule also differs in that it applies nationwide to consumer product manufacturers, importers and distributors (but not retailers), while the ARB regulation applies to any person (including retailers) who “sells, supplies, offers for sale, or manufactures consumer products for use in the State of California.” Finally, the U.S. EPA’s rule has an unlimited “sell-through” period for non-complying products manufactured before the effective date of the limits, whereas California law limits the sell-through period to three years.

U.S. EPA’s consumer products rule also does not prohibit the use of certain toxic air contaminants. In aggregate, ARB’s consumer products regulations have prohibited the use of certain chlorinated toxic air contaminants in 63 categories, resulting in emission reductions of 13 tons per day.

There is no comparable federal regulation related to reducing GHG emissions in consumer products.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed action, which includes the rationale for the proposed amendments and a summary of the potential environmental and economic impacts of the proposal.

Copies of the ISOR and the full text of the proposed regulatory language, in strikeout/underline format to allow for comparison with the existing regulations, may be obtained from the Board’s Public Information Office, Air Resources Board, 1001 I Street, Visitor and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (May 9, 2008). These documents are also available on ARB’s website listed below, or by contacting the agency contact persons listed below.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on the ARB’s web site listed below.

Inquiries concerning the substance of the proposed regulatory action may be directed to Ms. Carla Takemoto, Manager, Technical Evaluation Section, Stationary Source Division, at (916) 324-8028, e-mail ctakemot@arb.ca.gov, or Mr. Olufemi Olaluwoye, Air Pollution Specialist, at (916) 327-1503, e-mail oolaluwo@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action

may be directed are Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011 or Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board staff has compiled a record for this rulemaking action, which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/2008/cp2008/cp2008.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the ARB Executive Officer concerning the cost or savings necessarily incurred by public agencies and private persons and business in reasonable compliance with the proposed regulatory action are presented below.

The ARB Executive Officer has determined that the proposed regulatory action would not create costs or savings, as defined in Government Code section 11346.5(a)(5) and 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to state or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons and businesses. The Executive Officer has initially determined that there will be a potential cost impact on private persons or businesses directly affected as a result of the proposed regulatory action. As explained in the ISOR, the proposed amendments may have a significant adverse impact on some individual businesses but the overall statewide impacts are not expected to be significant.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has initially determined that the proposed amendments would have minimal impacts on the creation or elimination of jobs within the State of California, minimal impacts on the creation of new businesses and the elimination of existing busi-

nesses within the State of California, and minimal impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed amendments can be found in the ISOR.

The Board's Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action would affect small businesses.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than **12:00 noon, June 25, 2008**, and addressed to the following:

Postal mail:	Clerk of the Board Air Resources Board 1001 I Street, 23 rd Floor Sacramento, California 95814
Electronic submittal:	http://www.arb.ca.gov/lispub/comm/bclist.php
Facsimile submittal:	(916) 322-3928

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to the ARB in sections 38501, 38510, 38560, 38560.5, 38562, 38580, 39600, 39601, 41511, and 41712 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 38501, 38510, 38560, 38560.5, 38562, 38580, 39600, 39601, 41511, and 41712 of the Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

GENERAL PUBLIC INTEREST

**ENVIRONMENTAL PROTECTION
AGENCY**

**California Environmental Protection Agency
Publication of Final Fee**

Unified Program Fee Schedule for Trinity County

The 30-day public notice and comment period for the revised Unified Program fee schedule for regulated businesses in Trinity County concluded on April 20, 2008. The Secretary for Environmental Protection (Secretary) did not receive any comments and has determined that the fee schedule below is final, pursuant to the California Code of Regulations, title 27, section 15241(i). The California Department of Toxic Substances Control is the Certified Unified Program Agency for Trinity County and provided the Secretary with information necessary to revise the fee schedule to cover the necessary and reasonable costs to implement the Unified Program according to title 27, section 15241(b).

The new fees go into effect in May 2008.

**Unified Program Fee Schedule
For Trinity County
2008**

	Flat Fee	Program Element Fee	State Surcharge
All Regulated Businesses	\$80		\$24
Business Plan (Hazardous Materials inventory)		\$155	
Hazardous Waste Generators		\$170	
Aboveground Storage Tanks		NA until 2010	
Underground Storage Tanks			
Less Than 19,000 gals.		\$800	\$15
Between or Equal To 19,000-34,000 gals.		\$1,000	\$15
Greater Than 34,000 gals.		\$1,200	\$15
Calif. Accidental Release Program		\$1,200	\$270
Hazardous Waste Recyclers		\$96	
Small Quantity Onsite Hazardous Waste Treatment		\$125	

FISH AND GAME COMMISSION

California Regulatory Notice Register on April 25, 2008.

NOTICE OF FINDINGS

Hanging Gardens manzanita
(*Arctostaphylos edmundsii* var. *parvifolia*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2075.5 of the Fish and Game Code, the California Fish and Game Commission, at its April 10, 2008, meeting in Bodega Bay, made a finding that the petitioned action to remove Hanging Gardens manzanita (*Arctostaphylos edmundsii* var. *parvifolia*) from the list of rare plants is warranted.

The notice of proposed regulatory action to amend Section 670.2, Title 14, CCR, was published in the California Regulatory Notice Register on April 25, 2008.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

Marin bent grass
(*Agrostis blasdalei* var. *marinensis*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2075.5 of the Fish and Game Code, the California Fish and Game Commission, at its April 10, 2008, meeting in Bodega Bay, made a finding that the petitioned action to remove Marin bent grass (*Agrostis blasdalei* var. *marinensis*) from the list of rare plants is warranted.

The notice of proposed regulatory action to amend Section 670.2, Title 14, CCR, was published in the California Regulatory Notice Register on April 25, 2008.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

Slender-pod jewelflower
(*Caulanthus stenocarpus*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2075.5 of the Fish and Game Code, the California Fish and Game Commission, at its April 10, 2008, meeting in Bodega Bay, made a finding that the petitioned action to remove Slender-pod jewelflower (*Caulanthus stenocarpus*) from the list of rare plants is warranted.

The notice of proposed regulatory action to amend Section 670.2, Title 14, CCR, was published in the

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

Truckee barberry
(*Mahonia sonnei*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2075.5 of the Fish and Game Code, the California Fish and Game Commission, at its April 10, 2008, meeting in Bodega Bay, made a finding that the petitioned action to remove Truckee barberry (*Mahonia sonnei*) from the list of endangered plants is warranted.

The notice of proposed regulatory action to amend Section 670.2, Title 14, CCR, was published in the California Regulatory Notice Register on April 25, 2008.

**OFFICE OF STATEWIDE HEALTH
PLANNING AND DEVELOPMENT**

REVISED NOTICE

The following is a revised notice from the Office of Statewide Health Planning and Development concerning regulations on "Present on Admission and Principal Language Spoken Data Elements." The notice was originally published in the California Regulatory Notice Register on April 18, 2008, Register 2008, No. 16-Z, p. 595. There were incorrect references to the revision dates of some of the materials mentioned and an incorrect effective date of the regulations. All other aspects of the notice, including the comment deadline, are the same as the previously published notice.

**NOTICE OF INTENT TO PROPOSE
REGULATIONS FOR PRESENT ON
ADMISSION AND PRINCIPAL LANGUAGE
SPOKEN DATA ELEMENTS**

Title 22 California Code of Regulations
Division 7, Chapter 10 — *Health Facility Data*,
Amend Article 8, *Patient Data Reporting*
Requirements, to incorporate Present on Admission
and Principal Language Spoken Data Elements

NOTICE IS HEREBY GIVEN that the Office of Statewide Health Planning and Development (OSHPD)

proposes to update Sections 97215, 97225, 97226, 97227, 97241, 97244, and 97248, and to add sections 97234 and 97267 to Title 22, Division 7, Chapter 10, Article 8 of the California Code of Regulations (CCR). The proposed effective date is July 1, 2009.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may submit a written request for a public hearing, pursuant to section 11346.8(a) of the Government Code. The written request for hearing must be received by OSHPD's contact person, designated below, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her duly authorized representative, may submit written statements, arguments or contentions (hereafter referred to as comments) relevant to the proposed regulatory action by OSHPD. Comments must be received by the Patient Data Section of OSHPD by 5 p.m. on Monday, **June 2, 2008**, which is hereby designated as the close of the written comment period. Please address all comments to OSHPD, Patient Data Section, Attention: Regulations Coordinator. Comments may be transmitted by regular mail, fax, email or via the OSHPD website:

Website: www.oshpd.ca.gov/HID/MIRCal

E-mail: cdiamond@oshpd.ca.gov or
iogbonna@oshpd.ca.gov

Mail: Candace L. Diamond, Manager
Patient Data Section
400 R Street, Suite 270,
Sacramento, California 95811-6213

Fax: (916) 327-1262

Please note, if comments are sent via the website, email or fax there is no need to send the same comments by mail delivery. Website and email are the preferred methods for receiving comments. All comments whether sent by website, email, fax or by mail should include the author's name, email address and U.S. Postal Service address so that OSHPD may provide commenters with notice or any additional proposed changes to the regulations text.

Inquiries concerning the proposed adoption of these regulations may be directed to cdiamond@oshpd.ca.gov or iogbonna@oshpd.ca.gov.

Candace L. Diamond, Manager
Patient Data Section
400 R Street, Suite 270,
Sacramento, California 95811-6213

Irene Ogbonna, Analyst
Patient Data Section
400 R Street, Suite 270,
Sacramento, California 95811-6213

AUTHORITY AND REFERENCE

Authority for the proposed regulations is provided by the California Health and Safety Code, Sections 123147, 128735(f), 128735(g)(5), 128736(a)(5), 128736(d), 128737(a)(5), 128737(d), 128755, and 128810. The reference citations are Sections 128735, 128736, and 128737, and 128770.

TEXT OVERVIEW and POLICY STATEMENT

OSHPD is attempting to minimize health facility data reporting burdens by aligning state requirements and definitions with established national standards (as required by California Health and Safety Code Section 128735(f) which requires reporting requirements established by OSHPD to be consistent with national standards as applicable). This regulation package proposes migration from the OSHPD Discharge Data set's proprietary "Whether the Condition was Present at Admission" (CP@A) data element to a similar national standard data element called the "Present on Admission Indicator" (POA). In May of 2007, when the Uniform Billing 1992 form (UB92) used by all facilities who generate electronic bills was superseded by the Uniform Billing 2004 (UB04) form, the "Present on Admission Indicator" (POA) began to be reported by all facilities who use the UB04. OSHPD would like to become consistent with the national standard by adopting the POA Indicator data element in place of the CP@A data element.

This regulation package also proposes that the new data element "Principal Language Spoken" be reported with discharges and encounters occurring on or after January 1, 2009. SB 680, Figueroa, (Statute of 2001), incorporated into the California Health and Safety Code in Sections 128735(g)(5), 128736(a)(5), and 128737(a)(5), required that "Principal Language Spoken" be added as a data element to both inpatient and outpatient OSHPD data collection. More recently AB 800, Yee, (Statute of 2006), incorporated into the California Health and Safety Code in Section 123147, also required that a patient's principal spoken language be included in a patient's health record.

INFORMATIVE DIGEST/SUMMARY OF PROPOSED CHANGES

This regulation package proposes that OSHPD Discharge Data set's proprietary "Whether the Condition was Present at Admission" (CP@A) data element should be replaced with a similar national standard data element called the "Present on Admission Indicator" (POA). This would allow facilities who report POA to Medicare to report identical data to OSHPD and thus would reduce their reporting burden. Another benefit is that POA indicators are also reported on E-Codes (CP@A is reported only on diagnosis and procedure fields) and thus more data will be reported. Also, the use of a national standard when applicable is part of our mandate, stated in Sections 128735, 128736, and 128737.

This regulation package also proposes that the new data element "Principal Language Spoken" be reported with discharges and encounters occurring on or after January 1, 2009. Many facilities are already collecting this data because of its relevance to patient safety. The regulations will provide a standard way to report that data.

SB 680, Figueroa, (Statute of 2001), incorporated into the California Health and Safety Code in Sections 128735(g)(5), 128736(a)(5), and 128737(a)(5), required that "Principal Language Spoken" (PLS) be added as a data element to both inpatient and outpatient OSHPD data collection.

More recently AB 800, Yee, (Statute of 2006), incorporated into the California Health and Safety Code in Section 123147, also requires that a patient's principal spoken language be included in a patient's health record. The Census 2000 Summary File #3, prepared by the U. S. Census Bureau, shows that approximately 40% of Californians speak a language other than English at home. Poor communication between providers and patients can lead to lack of understanding that can have a negative impact on health care. Capturing principal language spoken will highlight the need for health care delivered in a language that both the provider and patient understand.

This regulations package also adds place-holder spaces to the Inpatient File Format and Specifications to allow for the eventual collection of ICD-10 codes. (These place-holder spaces are already included in the ED and AS File and Format Specifications.) Facilities will already be updating their computer systems to accommodate the new PLS data element and the POA indicators on E-Codes so the additional cost of accommodating ICD-10 placeholder spaces at the same time should be minimal.

This regulation package also makes the following minor changes: Table 1 (in Section 97248) is updated to re-

move a Condition Present at Admission default and also includes the unrelated removal of an unused Discharge Date default from the Table. There is also an unrelated clean-up change to delete a sentence from Section 97241 that provides outdated information about the availability of certain facility notices through MIRCal.

The following materials are available for review:

Section 97215. Format.

- Format and File Specifications for MIRCal Online Transmission Inpatient Data Effective with discharges occurring on or after July 1, 2008, revised on March 20, 2008
- Format and File Specifications for MIRCal Online Transmission Emergency Department and Ambulatory Surgery Data Effective with encounters occurring on or after January 1, 2009, revised on March 20, 2008

Section 97244. Method of Submission.

- Hospital Inpatient Data Record Manual Abstract Reporting Form (1370.IP), Effective with discharges occurring on or after July 1, 2008, revised January 18, 2008
- Hospital Inpatient Data Record Manual Abstract Reporting Form (1370.IP), Effective with discharges occurring on or after January 1, 2009, revised February 26, 2008
- Emergency Department Data Record Manual Abstract Reporting Form (1370.ED), Effective with encounters occurring on or after January 1, 2009, revised February 26, 2008
- Ambulatory Surgery Data Record Manual Abstract Reporting Form (1370.AS), Effective with encounters occurring on or after January 1, 2009, revised February 26, 2008

AVAILABILITY OF THE TEXT OF PROPOSED REGULATIONS, INITIAL STATEMENT OF REASONS, AND RULEMAKING FILE

INTERNET AVAILABILITY

Materials regarding this notice of proposed changes, the text of the proposed regulations, the Initial Statement of Reasons, and all of the updated forms, information upon which the rulemaking is based, and the Final Statement of Reasons may be accessed at the OSHPD website www.oshpd.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The text of proposed changes or modifications to the regulations will be available from the OSHPD website

www.oshpd.ca.gov/hid and will be available from OSHPD upon request. The text of any modified regulation, unless the modification is non-substantial or solely grammatical in nature, will be made available on the website at least 15 days prior to the date that OSHPD adopts the regulation. The changes will be underlined where text is added and ~~struck through~~ where text is deleted. OSHPD may adopt, amend, or repeal the foregoing proposal substantially as set forth without further notice.

ALTERNATIVES CONSIDERED

OSHPD has determined in accordance with Government Code Section 11346.5(a)(13) that no reasonable alternative considered by OSHPD or that has otherwise been identified and brought to the attention of OSHPD would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT ESTIMATES

Local Mandate Determination (Cal. Gov't Code 11346.5(a)(5)): As the proposed updates will impose requirements upon all California hospitals, and all licensed Ambulatory Surgery clinics, and will only incidentally affect governmental hospitals, there is no local mandate created by the proposed revisions that would require state reimbursement.

1. Estimate of Cost or Savings to Any State Agency (Cal. Gov't Code 11346.5(a)(6)): None.
2. Cost to Any Local Agency or School District That is Required to be Reimbursed by the State (Cal. Gov't Code 11346.5(a)(6)): None.
3. Non-Discretionary Cost or Savings Imposed on Local Agencies (Cal. Gov't Code 11346.5(a)(6)): None.
4. Cost or Savings in Federal Funding to the State (Cal. Gov't Code 11346.5(a)(6)): None.
5. Impact on Housing Costs (Cal. Gov't Code 11346.5(a)(12)): None.
6. Potential Cost Impact on Private Persons or Affected Business, Other Than Small Businesses (Cal. Gov't Code 11346.5(a)(9)): OSHPD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

7. Potential Adverse Economic Impact on Businesses: All California hospitals and all licensed Ambulatory Surgery clinics may have to make adjustments to their computer systems and reporting abilities to reflect the new changes.

OSHPD has determined that the regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

OSHPD has determined that these regulations will affect all California Licensed Ambulatory Surgery Clinics. 71 California Licensed Ambulatory Surgery Clinics are small businesses.

DETERMINATIONS

OSHPD has determined that the regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

Dated: April 8, 2008

Sacramento, California

Candace L. Diamond

Manager, Patient Data Section

Healthcare Information Division

RULEMAKING PETITION DECISIONS

DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF DECISION ON PETITION TO AMEND REGULATIONS

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Adult Institutions, Programs
and Parole**

PETITIONER

Robert Forbes, F-53660.

AUTHORITY

The authority granted by Government Code (GC) § 12838.5 vests to the California Department of Corrections and Rehabilitation (CDCR) all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished Youth and Adult Correctional Agency, California Department of Corrections, Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and the State Commission on Juvenile Justice, Crime and Delinquency Prevention. Penal Code (PC) § 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections refers to the Secretary of the CDCR. PC § 5054 vests with the Secretary of the CDCR the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein. PC § 5055 provides that commencing July 1, 2005, all powers/duties previously granted to and imposed upon the CDC shall be exercised by the Secretary of the CDCR. PC § 5058 provides that the Director may prescribe and amend regulations for the administration of prisons.

CONTACT PERSON

Please direct any inquiries regarding this action to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001.

AVAILABILITY OF PETITION

The petition to amend regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner contends that the CDCR is implementing a statewide family visiting policy which excludes any inmate that has been convicted of a violent offense from eligibility for a family visit, specifically that CDCR has included violent misdemeanor convictions in addition to those listed as violent felonies under PC § 667.5. Petitioner claims that this regulation is not compliant with the Administrative Procedure Act (APA), which states a regulation must conform to legislative will and that if such regulations violate acts of the legislature, they are void. Petitioner further states that the Legislature has the authority to define a crime as violent, PC § 667.5, not CDCR and request that CDCR amend California

Code of Regulations (CCR), Title 15, Subsection 3177(b)(1) to match that listed under PC § 667.5.

DEPARTMENT DECISION

The Secretary of the CDCR declines the petition in its entirety.

The CDCR has been granted the authority by the enactment of Penal Code § 5058, in which the legislature has granted the Secretary of the CDCR the authority to prescribe or amend rules and regulations for the administration of the prisons. All regulations that the Secretary of the CDCR proposes must be vetted through the rulemaking process and comply with the Administrative Procedures Act (APA) of California, which the regulation in question has completed.

Petitioner challenges Title 15 section 3177(b)(1) which denies the privilege of family visiting to persons under specified circumstances, including persons convicted of listed "violent offenses". Petitioner argues that CDCR's definition of "violent offenses" conflicts with statute, yet he does not identify a statute that governs the use of that term for family visiting. Instead, petitioner contends the Legislature's definition of "violent felony" in a sentencing statute, Penal Code section 667.5, is binding on CDCR in its definition of "violent offense" for family visiting.

Petitioner misconstrues a law regarding an administrative agency's implementation of a statute, which provides:

[There is no agency discretion to promulgate a regulation which is inconsistent with the governing statute. . . . Whatever the force of administrative construction . . . final responsibility for the interpretation of the law rests with the courts. . . . Administrative regulations that alter or amend the statute or enlarge or impair its scope are void. . . .] (Henning v. Division of Occupational Safety and Health, 219 Cal.App.3d 747, 757-758.)]

CDCR has not promulgated a regulation that is inconsistent with the governing statute. Penal Code section 667.5 is entitled "Prior prison terms; enhancement of prison terms for new offenses", and provides an additional prison term for persons newly convicted of specified felonies whose criminal history includes convictions of specified felonies. This statute governs sentencing by the courts in particular circumstances. It does not provide for limitations on family visiting. Furthermore, it provides, in pertinent part, "For the purpose of this section, 'violent felony' shall mean any of the following [listed crimes]". The Legislature specifically limited the definition to this sentencing section of the Penal Code. Finally, the Legislature didn't even define

the term used by CDCR “violent offense”; it defined the term “violent felony”.

The CDCR asserts that family visiting is a privilege and a creation of CDCR regulations, not of any statute, and may be restricted or eliminated in the interest of safety and security for the visitors, public, staff and inmates alike. Therefore, CDCR has implemented specific criteria which would exclude an inmate from being eligible for a family (overnight) visit. The exclusionary criteria includes but is not limited to any inmate convicted of a violent offense involving a family member or minor or any sex offense, which includes but is not limited to the penal codes listed under CCR, Title 15, Subsection 3177(b)(1). In addition, violent or sex related offenses without a conviction can prohibit an inmate from family visiting eligibility if substantial documented evidence exists.

The inmates who are denied family visits under the current regulations have demonstrated, either by their commitment offense, prior misdemeanor or felony arrest or convictions or by in custody misconduct, that they pose a danger to others and an inability to conform their behavior to social expectations. Such behavior histories create a higher security risk for prison staff and visitors and must be taken into account by administrators with responsibility for the safe operation of prisons and other CDCR facilities. In general, such prisoners require a higher degree of direct supervision than do inmates with less serious histories of criminal offenses and in prison/disciplinary misconduct. Because overnight family visiting is unsupervised by staff, its availability to inmates with the enumerated commitment offenses, prior misdemeanor or felony arrest or convictions, or documented in custody misconduct is very problematic. Additionally, since family visiting space is limited, the department has established a priority in its regulations for those inmates who, based on their commitment offense, parole prospects, and behavior in custody, will benefit the most from family visiting.

The CDCR reiterates the family visiting is a privilege not a right to the inmates and the Secretary of the CDCR has the overall responsibility to develop and implement regulations regarding family visiting to ensure the safety and security of the institutions, staff, visitors, and inmates alike as stated in PC § 5054. Only five other

states: Connecticut, Mississippi, New Mexico, New York and Washington, allow conjugal visits of any kind. Likewise, the CDCR is responsible for ensuring that family visiting produces its desired result, a healthy, positive, and safe experience for all involved.

**AVAILABILITY OF INDEX OF
PRECEDENTIAL DECISIONS**

**DEPARTMENT OF CONSUMER
AFFAIRS**

**CONTRACTORS STATE LICENSE BOARD
PRECEDENTIAL DECISIONS AND
DECISION INDEX**

Notice of Availability of Precedential Decisions and Decision Index Re: Government Code § 11425.60

NOTICE IS HEREBY GIVEN that the Contractors State License Board, pursuant to the requirements of § 11425.60 of the Government Code, maintains an index of precedent decisions. The index is available to the public by annual e-mail subscription from the Board. The index and the text of the decisions can be viewed by appointment, at the Contractors State License Board office below. For subscription or additional information, or to schedule an appointment to view precedent decisions, contact:

Jane Flint, Legal Action Deputy
Contractors State License Board
9821 Business Park Drive
Sacramento CA 95826
Telephone: (916) 255-4057
Email: jflint@cslb.ca.gov
Facsimile: (916) 255-1944

The index and text of the precedent decisions also can be viewed on the Internet at http://www.cslb.ca.gov/General_Information/library/laws-and-regulations.asp under the section entitled, CSLB Precedent Decisions.

**ACCEPTANCE OF PETITION
TO REVIEW ALLEGED
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**ACCEPTANCE OF PETITION TO REVIEW
ALLEGED UNDERGROUND REGULATIONS**

(Pursuant to title 1, section 270, of the
California Code of Regulations)

DEPARTMENT OF MENTAL HEALTH

Agency being challenged:

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Michael St. Martin, CO-000414-3, RRU-7
P.O. BOX 5003
Coalinga, CA 93210

Agency contact:

Anne Nguyen
Dept. of Mental Health
1600 9th Street, Ste. 151
Sacramento, CA 95814

Please note the following timelines:

Publication of Petition in Notice Register: May 9, 2008

Deadline for Public Comments: June 9, 2008

Deadline for Agency Response: June 23, 2008

Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response

Deadline for OAL Decision: September 8, 2008

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

**PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW**

RE: **ALLEGED UNDERGROUND
REGULATION**

Department of Mental Health, Coalinga
State Hospital

Administrative Directive AD-624,
INDIVIDUALS' MAIL AND PACKAGES

FROM: MICHAEL GEORGE ST.MARTIN,
Petitioner

DATE: March 17, 2008

This is a computer generated petition based on the optional OAL form supplying the information required by Title 1, California Code of Regulations, '280, for a petition challenging an alleged underground regulation.

1. Identifying Information: Petitioner

Your Name: **MICHAEL GEORGE
ST.MARTIN
CO-000414-3, RRU-7
P.O. Box 5003,
Coalinga, CA 93210**

Your Address:

Your Telephone Number: **(559) 934-0391 or
(559) 934-0392**

Your E-Mail (if you have one): michaelst.martin@
hotmail.com

2. State Agency or Department being challenged:

**California Department of Mental Health
("DMH")
(Coalinga State Hospital ("CSH"))**

3. Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible.

Description of alleged Underground Regulation

Petitioner alleges the ENTIRE Coalinga State Hospital ("CSH") Operation Manual is an Underground Regulation, as there is no evidence that any portion of the CSH Operation Manual has been promulgated pursuant to the Administrative Procedures Act.

By this action, Petitioner specifically alleges the section of the CSH Operation Manual known as *Administrative Directive AD-624* is an underground regulation, as there is no evidence that this administrative directive has been promulgated pursuant to the Administrative Procedures Act.

Administrative Directive AD-624 described as a “coordinated set of guidelines and procedures regarding the responsibilities, procedures, and limitations which govern an Individual’s incoming and outgoing mail and packages.”

A true and correct copy of
ADMINISTRATIVE DIRECTIVE AD-624
is attached hereto as EXHIBIT A.

4. Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation.

Administrative Directive AD-624 is applied to all persons, no matter what their classification who are detained at Coalinga State Hospital, and this includes, but is not limited to, all persons proposed or adjudicated to be SVPs in California who are detained by the Department of Mental Health. Its existence and use are not in controversy. Examples of its application are further demonstrated in Section “7.” of this petition.

Each hospital has some version of AD-624 that is applied statewide to all persons detained in Department of Mental Health facilities.

The DMH has taken the firm position that none of its Administrative Directives are regulations subject to the provisions of the APA.

Petitioner alleges that *Administrative Directive AD-624* is a regulation within the meaning of the APA.

“The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. . . . (Tidewater Marine Western, Inc. v. Bradshaw, supra, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.)” (*Morning Star Co. V. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 55)

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code that no express statutory exemption to the requirements of the APA is applicable.

***Administrative Directive AD-624*
Is a Regulation Within the Meaning of the APA**

Prior to implementation, or revision thereof, the Department was required to adopt *Administrative Directive AD-624*, or any revision thereof, but failed to do so, and thus, pursuant to the law the current version now being utilized is invalid and an “Underground Regulation.”

Though the Director may prescribe rules and regulations such as *Administrative Directive AD-624*, they must be promulgated and filed per Chapter 3.5 of art. 1 of Division 3 of Title 2 of the Administrative Procedures Act, government Code, section 11340 et seq. There is no evidence that DMH has ever promulgated any version of *Administrative Directive AD-624* pursuant to the APA.

Administrative Directive AD-624 is a regulation. Chapter 3.5, article 5, of the Administrative Procedure Act, Govt. Code sections 11346 et seq., governs adoption, amendment and repeal of regulations by administrative agencies known as rulemaking. Govt. Code section 11342.600 provides that:

“[A regulation is] every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret or make specific the law enforced or administered by it or to govern its procedure.”

Syngenta Crop Protection, Inc. V. Helliker (2d Dist. 2006) 138 Cal.App. 4th 1135, 1175–77, 42 Cal.Rptr.3d 191, 221–222, quotes *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 59 Cal.Rptr.2d 186, which explains:

“[The APA] establishes <minimum procedural requirements= for rulemaking. ([Govt. C.] ’ 11346(a).) The agency must provide notice of the proposed action (*Id.* ’ ’ 11346.4, 11346.5), the complete text of the proposal (’ 11346.2(a)), and an initial statement of reasons for the proposal (’ 11346.2(b)), and a final statement of reasons (’ 11346.9(a)). The agency must provide a public hearing if an interested person timely requests a hearing (’ 11346.8(a)), provide an opportunity for interested persons to submit written comments if no hearing is held (*ibid.*), and respond in writing to comments in the final statement of reasons (’ 11346.9(a)(3)). The agency must submit the entire rulemaking file to the Office of Administrative Law (’ ’ 11347.3(c), 11342.550), which reviews the regulation for compliance with the law and other criteria and approves or disapproves the regulatory action. (’ ’ 11349.1, 11349.3 . . . ” (14 Cal. 4th 557, 59 Cal.Rptr.2d 186.)

“No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application,

or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.” (Govt. Code § 11340.5(a).)

“A substantial failure to comply with chapter 3.5 of the APA renders the regulation invalid. § 11350(a); *Tidewater Marine Western, Inc. v. Bradshaw*, *supra*, 14 Cal. 4th at 576, 59 Cal.Rptr.2d 186.”

“A regulation subject to the APA thus has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided . . . Second, the rule must <implement, interpret, or make specific, the law enforced or administered by the [agency], or . . . govern [the agency=s] procedure.= ([Former] Govt. Code § 11342(g) [now § 11342.601].) Of course, interpretations that arise in the course of case-specific adjudication are not regulations, though they may be persuasive as precedents in similar subsequent cases . . . Similarly, agencies may provide private parties with advice letters, which are not subject to the rulemaking provisions of the APA. ([Former] Govt. Code § 11343(a)(3), 11346.1(a) [now § 11340.9(I)].) Thus, if an agency prepares a policy manual that is no more than a summary, without commentary, of the agency=s prior decisions in specific cases and its prior advice letters, the agency is not adopting regulations . . . A policy manual of this kind would of course be no more binding on the agency in subsequent agency proceedings or on the courts when reviewing agency proceedings than are the decisions and advice letters that it summarizes.” (Emphasis added.) (*Tidewater Marine Western, Inc. v. Bradshaw*, *supra*, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.”)

Morning Star Co. v. State Bd. Of Equalization (2006), 38 Cal. 4th 324, 333–334, 42 Cal.Rptr.3d 47, 53–54, confirms the Syngenta/Tidewater analysis, especially that a regulation must be intended to apply generally, and that it must implement, interpret or make specific the law administered by the agency, or govern the agency=s procedure.

Administrative Directive AD–624 is a regulation. It is applied to all persons proposed or adjudicated to be SVPs in California who are detained at Coalinga State Hospital. It declares what type of incoming and outgoing mail and packages may be received by SVPs detained at Coalinga State Hospital, and how these items are handled and distributed. Its use is mandatory. Thus the mandate of **AD–624** implements, enforces or other-

wise makes specific the language of the Welfare and Institutions Code, §§ 5325, 5325.1, and Title 9, California Code of Regulations (“CCR”), §§).

NO EXCEPTION EXCLUDES ADMINISTRATIVE DIRECTIVE AD–624 FROM THE APA PROCEDURES.

Clearly inapplicable are the provisions of Govt. Code § 11340.9 excluding:

“(d) A regulation that relates only to the internal management of the state agency. . .”

“(f) A regulation that embodies the only legally tenable interpretation of a provision of law. . .”

“(I) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.”

Armistead v. State Personnel Bd. (1978) 22 Cal.3d 198, 204–205, 149 Cal.Rptr. 1, 4 quoting from the First Report of the Senate Interim Committee on Administrative Regulations to the 1955 Legislature, documents the necessity for strict adherence to the APA. The court found this necessary so as to prevent state agencies from avoiding obedience to the APA by denominating rules as “<policies,= <interpretations,= <instructions,= <guides,= <standards,= or the like,” and by containing them “in internal organs of the agency such as manuals, memoranda, bulletins, or [directing them] to the public in the form of circulars or bulletins.”

Armistead underlined that “[R]ules that interpret and implement other rules have no legal effect unless they have been promulgated in substantial compliance with the APA” (emphasis added), thus provision of state personnel transactions manual governing withdrawal of resignation by state employee merited no weight as agency interpretation where such provision had not been duly promulgated and published.

The Administrative Directive in question here fits the above description perfectly. Although it is referred to as “coordinated set of guidelines and procedures,” it is called an “Administrative Directive,” and is replete with mandatory words such as “shall” and “will” in regard to actions to be taken. It contains mandatory language thus making it much more than simple “coordinated set of guidelines and procedures,” policies, interpretations, instructions, guides, standards, or the like. Instead, it is a forbidden underground regulation which has not been adopted pursuant to the Administrative Procedures Act.

The justification for issuing AD–624 is stated in that document as, “Department of Mental Health Special Order Number 248.01 and 249.01 also pursuant to Section 4136 of the Welfare and Institutions Code.” **Special Orders 248.01 and 249.01** apply statewide to all DMH

facilities. These *Special Orders* mandate what each facility must mandate in its own version of an *Administrative Directive*. Having each DMH facility issue its own mandated version of *Special Orders 248.01 and 249.01* under the label of an *Administrative Directive* is just the sort of “avoiding obedience to the APA” that is discussed in *Armistead v. State Personnel Bd.*

**True and correct copies of
Special Orders 248.01 and 249.01
are attached hereto as EXHIBIT B.**

**ADMINISTRATIVE DIRECTIVE AD-624
APPLIES GENERALLY TO ALL PERSONS
DETAINED PURSUANT TO THE SVPA
(WIC §§ 6600 et seq.)**

Modesto City Schools v. Education Audits Appeal Panel, (3d Dist. 2004) 123 Cal.App. 4th 1365, 1381, 20 Cal.Rptr.3d 831, 842, holds that to be deemed an underground regulation, which would be invalid because it was not adopted in substantial compliance with the procedures of the APA, the agency must intend it to apply generally rather than in a specific case, and the agency must adopt it to implement, interpret, or make specific the law enforced by the agency.

Kings Rehabilitation Center, Inc. V. Premo, (3rd Dist. 1999) 69 Cal.App. 4th 215, 217, 81 Cal.Rptr.2d 406, notes:

“The APA is partly designed to eliminate the use of <underground= regulations; rules which only the government knows about. If a policy or procedure falls within the definition of a regulation within the meaning of the APA, the promulgating agency must comply with the procedures for formalizing such regulations, which include public notice and approval by the Office of Administrative Law (OAL). Failure to comply with the APA nullifies the rule. (Govt. Code § 11350(a); *Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 204, 149 Cal.Rptr. 1, 4”) (Emphasis added.)

Administrative Directive AD-624 is neither intended nor utilized to make specific determinations but is utilized generally when determining the incoming and outgoing mail and packages rights of all persons detained under the SVPA. Thus, *AD-624* is a regulation that must be promulgated as a regulation but otherwise is a null and void underground regulation.

6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

Administrative Directive AD-624 is at odds with the rights to mail conveyed by the California and United States Constitutions, and with the statutory rights provided in Welfare and Institutions Code Sections 5325 and 5325.1. *Administrative Directive AD-624* is overbroad and not narrowly tailored to accomplish the goal stated in the least restrictive manner as is required by statutory and constitutional law. Since *Administrative Directive AD-624* is replete with mandates that are in direct violation of statutory law and both the California and United States Constitution, OAL regulatory oversight and public comments are needed.

The state authorized enforcement by state employees of the numerous statutory and constitutional violations contained in each and every un-promulgated, underground,” *Administrative Directive* has resulted in a great deal of litigation at great expense to the taxpayers of California. The OAL, pursuant to its regulatory duties under the OAL, is in a position to bring these underground regulations into the oversight process, and has a duty to the taxpayers to do so.

Public comment and OAL oversight is needed in order to halt the “bureaucratic tyranny” warned of in *Tidewater* and *Morning Star*.

Morningstar reiterates, “[2] These requirements promote the APA’s goals of bureaucratic responsiveness and public engagement in agency rulemaking. ‘One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law’s requirements so that they can conform their conduct accordingly [citation]. The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policy-makers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ [132 P.3d 255] (*Tidewater*, *supra*, 14 Cal.4th at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. V. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.

Administrative Directive AD-624 makes numerous references to *Administrative Directive AD 626*, Patient Property, and its attached *Allowables List*, which on February 6, 2008, the DMH certified, “The Department will not issue, use, enforce, or attempt to enforce the alleged underground regulation.” Thus, through the use and enforcement of *Administrative Directive AD-624*, the DMH continues to enforce the provisions of *Admin-*

istrative Directive AD-626 even after it certified on February 6, 2008, it would no longer do so.

Petitioner herein, Michael St.Martin, filed four Patients' Rights Complaints alleging the violation of statutory law and his First Amendment Constitutional rights. The Department of Mental Health and Coalinga State Hospital justified these violations under the authority of numerous underground regulations, particularly *Administrative Directive AD-624*, and/or one of the associated Administrative Directives that refer to and/or derive their authority from *Administrative Directive AD-624*. Three of these complaints have been submitted to the Director's Level in Sacramento by St.Martin, but now some 14 months after their original filing remain unanswered. The fourth complaint remains unanswered at the local level.

- (1) On January 15, 2007, St.Martin filed Patient Complaint SR# 710302, asserting his right to receive printed material downloaded from the Internet and sent to him through the United States Mail.
- (2) On January 15, 2007, St.Martin filed Patient Complaint SR# 710483, asserting his right to utilize all classes of mail normally available through the United States Postal Service.
- (3) On January 15, 2007, St.Martin filed Patient Complaint SR# 710518, asserting his right to receive literature and other printed material that is legal to send through the United States Postal Service.
- (4) On February 14, 2007, St.Martin filed a Patient Complaint concerning the refusal of the CSH Mail Personnel to mail legal mail to his attorney. This complaint remains unanswered.

Each of the above complaints was denied by DMH employees or officials based on the authority usurped through the use DMH underground regulations which are in direct conflict with statutory law, and both the California and United States Constitutions.

A true and correct copies of
Complaint SR# 710302, dated January 15, 2007
Complaint SR# 710483, dated January 15, 2007
Complaint SR# 710518, dated January 15, 2007
Complaint dated February 14, 2007
 are attached hereto as EXHIBIT C.

CSH patient Thomas B. Watson submitted complaint SR#712336 to the DMH attacking the statutory and constitutional violations contained in the CSH mail policy. The text is as follows:

“TO: Department of Mental Health
 Office of Human Rights
 1600 — 9th Street, Rm. 153
 Sacramento, CA 95814

SUBJECT: Appeal of Complaint regarding
 rejection of legal material, SR
 712336

TO WHOM IT MAY CONCERN:

Please find enclosed copies of complaints I filed with the Office of Patients Rights at Coalinga State Hospital (CSH), the Acting Executive Director at CSH, and the Office of Patients' Rights (OPR) in Sacramento, concerning the rejection of legal material sent from the Georgetown University Law School, specifically the *Georgetown Law Journal*. The justification given was: “It did not come from an approved vendor.” Also, there was neither due process afforded nor notification given prior to the return of this publication, and thus no pre-return appeal was available. These policies violated Complainant's First, Sixth and Fourteenth Amendment Federal Constitutional rights, the California Constitution, and statutory law, e.g., Welf. & Inst. Code sections 5325 and 5325.1.

There are essentially four interrelated rights involved herein: (1) the right to receive books, magazines and other published material; (2) the right to receive legal material; (3) the right to the Denial of Rights process prior to the material being returned; and, (4) the right to notification, appeal, and choice of disposition for the rejected material.

ITEM (1) THE RIGHT TO RECEIVE PUBLICATIONS

In respect to the right to receive books, magazines and other published material, the answer at every level of this appeal has, to date, essentially stated materials are considered contraband that are not from an “Approved Vendor.” However, this is not true. The “Allowables List” attached to Administrative Directive (AD) 626 groups all books, magazines, and published materials into one category designated as “Publications,” and states they may be received in three manners: packages received by mail [home packages]; purchased through CSH Canteen; and, purchased through vendor. The problem here is that publications cannot be received from any vendor, but only from specific vendors approved by CSH. This is what violates complainant's rights. CSH has only one approved vendor for books, and that is Edward R. Hamilton, Inc., a company that specializes in discount and close-out books. This se-

verely impacts Complainant's First Amendment rights by limiting available publications to only one specific specialty vendor.

The controversy herein appears to be what restrictions can CSH legally place upon the receipt of publications in the realm of "Approved Vendors." The OPR in Sacramento stated this "complaint does not support an action of abuse or neglect, punitive withholding or unreasonable denial of patients' rights." In reaching this conclusion, the OPR Patients' Rights Specialist, Agnes Lintz, cites the United States Supreme Court case *Bell v. Wolfish*, 441 U.S. 520, at 549-551, 99 S.Ct. 1861 (1979). This high court ruling unquestionably supports complainant's position, and leaves him wondering just whom the Office of Patients' Rights is representing.

The question before the Supreme Court in *Bell v. Wolfish* was "[w]hether the governmental interest in maintaining jail security and order justifies rules that . . . (b) prohibit receipt at the jail of books and magazines that are not mailed directly from publishers." (441 U.S. at 550, and FN 31.)

Thus, in *Bell v. Wolfish*, 441 U.S. 520, the issue relevant to this appeal involved the Supreme Court's approval of the "'publisher-only' rule to permit the receipt of books and magazines from bookstores as well as publishers and book clubs. 43 Fed.Reg. 305766 (1978) (to be codified in 28 CFR § 50.71)." (*Bell v. Wolfish*, 441 U.S. 520, at 549.) The rule approved of by the High Court involved only hardcover books, as all other publications were allowed from *any* source. (*Id.* at 549, 552.) The publication at issue in the present situation, the *Georgetown Law Journal*, is a paperback or soft-cover publication. The Supreme Court further stated, "We are also influenced in our decision by the fact that the rule's impact on pretrial detainees is limited to a maximum period of approximately 60 days." (*Id.* at 550.)

Thus, both state and federal prisons allow prisoners to received books and other printed material directly from *any* publisher or legitimate book store without reference to a specific designated "approved vendor." In California, Penal Code §§ 2600, 2601, create a *right* for prisoners to receive publications directly from publishers and book stores. Prisoners are not subjected to any specific "approved vendor" requirement for printed material, and as *civil* detainees, individuals at CSH must be given no less than prisoners. (*Jones v. Blanas* (9th Cir. 2004) 393 F. 3d 918, *cert. denied*, 546 U.S. ____ (10/3/05); *Hydrick v. Hunter* (9th Cir. 2006) 449 F. 3d 978.)

Therefore, any policy which allows or requires rejection of printed material which is legally distributed by the United States Post Office, for any reason, is patently unconstitutional and in violation of federal law. In the present case, an "AD" which places a 1/2" limit on re-

ceived publications, is arbitrary and capricious. It is also similar to the prison regulation declared unconstitutional in: *Morrison v. Hall*, (9th Cir, 2001) 261 F. 3d 896, 906, where a prison regulation that rejected certain classes of mail was declared unconstitutional; and, *Ashker v. California Dep't of Corrections*, (9th Cir. 2003) 350 F. 3d 917, enjoining the enforcement of a book labeling policy that required publishers and bookstores to affix a special label on books being mailed to prisons. The Courts have consistently held that institutions' security needs are met when they retain the option of searching the package.

In the present situation, it is ludicrous to claim security as the reason patients can only receive publications from the institution's sole book vendor, Edward R. Hamilton, when patients may receive *all* publications in home packages. To so require is simply a violation of Complainant's First Amendment rights. Not every patient has someone willing to purchase books from a publisher or bookstore, then repackage those books and send them in a home package. On the other hand, nearly every patient does have the ability to order those publications directly from the publisher, a book store, or a book club. It is totally absurd for CSH to require every possible publisher or bookstore to submit to the rigors of becoming what CSH has defined as an "Approved Vendor."

The CSH Acting Executive Director, Ben McLain, stated in his answer to this appeal, "A facility can inhibit access to published and printed materials so long as it is related to legitimate safety and security interests." However, no official at CSH actually reviewed the publication, and McLain failed to proffer any particular safety and security concern for the *Georgetown Law Journal*, a publication mailed directly from the publisher, the Georgetown University, one the nation's most prestigious law schools. McLain's safety and security interest becomes particularly absurd when considering that this same publication would have been allowed had it been received in a package from home.

ITEM (2) THE RIGHT TO RECEIVE LEGAL MATERIAL

The right to receive legal material is a fundamental First Amendment Right. It implicates both the Free Speech Clause and the Right of Access to the Courts. This educational legal material should not be confused with "confidential Legal Mail," as did the Office of Patients' Rights in Sacramento. Complainant is not asking to receive legal publications as confidential mail, but rather to receive legal material "from bookstores as well as publishers and book clubs," where the institution retains the ability to search the material for contraband the

same as would be done if the same material was received, as is presently allowed, in a home package.

In the prison context, the Ninth Circuit cites the U.S. Supreme Court in *Clement v. Terhune*: “The First Amendment ‘embraces the right to distribute literature, and necessarily protects the right to receive it.’ *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 143 (1943). It protects material distributed over the internet as well as by the means of communication devices used prior to the high-tech era. *Reno v. ACLU*, 521 U.S. 844, 868 (1997). ‘[T]he right to receive publications is . . . a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them.’ *Lamont v. Postmaster General of U.S.*, 381 U.S. 301, 308 (1965) (Brennan, J. concurring).” (See *Clement v. Terhune* (9th Cir. 2004) 364 F. 3d 1148, 1151.) Prisoners retain their First Amendment right to receive information while incarcerated. *Turner v. Safely*, 482 U.S. 78, 84 (1987) [“Prison walls do not form a barrier separating inmates from the protections of the constitution.”] See also *Prison Legal News v. Cook*, (9th Cir.) 2001) 238 F. 3d 1145, 1149; *Morrison v. Hall* (9th Cir. 2001) 261 F. 3d 896, 906 [“The Supreme Court has repeatedly recognized that restrictions on the delivery of mail burden an inmate’s ability to exercise his or her First Amendment rights.”] In *King v. Borg*, (E.D.Cal. 1993), CIV S-87-0519, the federal court added “legal organizations” to the definition of legal mail. This would include law schools.

ITEM (3) THE RIGHT TO DENIAL OF RIGHTS PROCESS AND TO APPEALS

Complainant has a Fourteenth Amendment right to due process of law. Patients in California have not only constitutional rights afforded them, but also state created rights which are set forth in Welfare and Institutions Code (WIC) §§ 5235 and 5325.1, commonly referred to as the “Patients Bill of Rights.”

Contrary to the Hospital’s position, all of the rights in WIC §§ 5325 and 5325.1 apply to patients committed under WIC §§ 6600, et seq. See *In re Calhoun* (2004) 121 Cal. App. 4th 1315, where the appellate court Applies §§5325 and 5325.1 to § 6600 detainees based on the equal protection clauses of the state and federal constitutions. The Appellate Court based its decision on the California Supreme Court holding in *In re Qawi*, (Cal. 2004) 32 Cal. 4th 1, 7, 7 Cal. Rptr. 3d 780, where the Supreme Court held that the rights of a mentally disordered offender (MDO) are the same as those of patients involuntarily committed under the LPS Act. The Legislature also applied WIC § 5325 to WIC § 6600 detainees in Penal Code Section 1610(c).

As such, the Hospital is required by state law, and by DMH regulations to follow the Denial of Rights process prior to denying any right. See DMH Special Order Number 254.01 (Oct. 10, 2003), where the policy statement is made: “It is the policy of the Department of Mental Health that each state hospital shall protect and promote patient’s rights and shall not deny a patient one or more rights without meeting good cause criteria.”

A publication, such as the *Georgetown Law Journal* does not fall into any of the enumerated “good cause criteria” which would allow its receipt to be denied.

Section V of Special Order 254.01 lists only five criteria for denying a patient’s right, none of which could be applied to the receipt of published legal material. Section VII requires a specific documentation process. Section VIII requires a restoration of right procedure. None of these procedures were followed in the present case.

ITEM (4) THE RIGHT TO APPEAL AND NOTIFICATION PRIOR TO DISPOSAL OF PROPERTY

The very basic right to appeal, or “the right of the people . . . to petition the Government for a redress of grievances” (First Amendment), was not allowed prior the rejection and disposition of the *Georgetown Law Journal* which was received directly from the publisher.

CSH Administrative Directive 818, CONTRABAND, allows that the determination of disposition of items not allowed in the Individual’s possession may be made by the Individual. The individual in this case was given no such opportunity.

CONCLUSION

Complainant, in his argument, has asserted Federal Constitutional rights. Complainant also asserts the same rights under the California Constitution.

The CSH policy being complained of herein is almost the reverse of those used in the California prison system, where books may only be received from publishers, bookstores and book clubs, but not in home packages. At CSH, all publications can be received in home packages, but not from publishers, bookstores, or book clubs.

It is illogical, illegal, arbitrary and capricious to not allow publications from publishers, bookstores, or book clubs when all publications are allowed in home packages. As civil detainees, patients at CSH should be allowed to receive publications from *any* source.

Complainant now requests that the present policy be amended to come into compliance with current constitutional and statutory law, and that he be reimbursed for any costs incurred in the illegal rejection of his legal material.”

The Director's Level response, signed by Andria Quinnell, Patients Rights Analyst, failed to address the issues raised. The statutory and Constitutional violations presented were ignored, and instead Patient's Rights Analyst Andria Quinnell issued an answer that was mere ephemeral sophistry. This Director's Level response simply delayed, denied and diverted attention away from the issues by directing appellant to "work with program staff," and by calling legal material "Educational materials [which] must be approved by the Central Program Services Education Staff and your Wellness and Recovery Team. . ."

A true and correct copy of
**DMH Office of Human Rights, Director's
 Level Response**
To complaint #712336, dated January 14, 2008
 is attached hereto as EXHIBIT D.

This type of obdurate opposition to correcting illegal and unconstitutional contents in its Administrative Directives perfectly illustrates why the Legislature established the procedures set forth in the Administrative Procedures Act. This clearly demonstrates the absolute need for oversight and public input to halt the type of bureaucratic tyranny exhibited by the Department of Mental Health by issuing, using, enforcing, or attempting to enforce this type of underground regulation.

CONCLUSION

The Department of Mental Health is not, and has not been, responsive to the public they serve. Nor has the DMH been responsible to the taxpayers who must pay the bills that result from the failure of the DMH to follow the law and serve the public who pays their salaries. The California Supreme Court directed attention to this problem by stating:

"Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]' 1132 P.3d 255] (*Tidewater; supra*, 14 Cal.4th at pp. 568-569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)" (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

Such bureaucratic tyranny has been a problem throughout the history of this country. Now, it must be stopped once again. The tyrannical bureaucrats in the Department of Mental Health must be directed to follow the law.

The DMH, part of the Executive Branch, lacks Constitutional authority to enact legislation. The Legislature has granted state agencies and departments qua-

si-legislative powers through the APA providing they follow specific promulgation procedures. However, until and unless the DMH does follow the provisions of the APA to properly promulgate **Administrative Directive AD-624**, it is an underground regulation which has been implemented in violation of the Separation of Powers Clause, Article III, Section 3, of the California Constitution.

To allow the DMH to continue to utilize a controversial Administrative Directive, such as **Administrative Directive AD-624**, would be to allow the sort of unfettered power in the Executive Branch that is a step toward a totalitarian concentration of power in the executive; a power to be exercised with inadequate legislative standard, and capable of avoiding judicial review, particularly when done through sleight-of-hand tactics designed to avoid review, has been prohibited from the earliest times. See *Hayburn's Case*, (1792) 2 U.S. (Dall.) 408, 1 L.Ed. 436, and its progeny.

Based on the foregoing, it is clear that there is a need for public participation in the regulatory process which directs the attention of agency policymakers within the Department of Mental Health to the public they serve, and to ensure that those persons or entities whom a regulation will affect have a voice in its creation.

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to:

Stephen W. Mayberg, Ph.D., Director
 California Department of Metal Health
 1600 9th St., Suite 151
 Sacramento, CA 95814
 (916) 654-2413 / (916) 654-2309

I certify that all the above information is true and correct to the best of my knowledge.

/s/

MICHAEL GEORGE ST. MARTIN
 PETITIONER

March 12, 2008

Date

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State,

Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-0411-02
**BOARD FOR GEOLOGISTS AND
 GEOPHYSICISTS**
 Office Location Change

The Board for Geologists and Geophysicists is amending section 3000, title 16, California Code of Regulations, entitled "Location of Offices". The amendment changes the address of the principal office.

Title 16
 California Code of Regulations
 AMEND: 3000
 Filed 04/24/2008
 Effective 04/24/2008
 Agency Contact: Patty Smith (916) 263-2233

File# 2008-0311-02
BOARD OF EQUALIZATION
 Interstate and Foreign Commerce

This title 1, California Code of Regulations, Section 100 change without regulatory effect amends section 1620 of title 18 of the California Code of Regulations to add an exemption from use tax of the first \$800 in value of tangible personal property hand-carried into the state from a foreign jurisdiction so as to conform to California Revenue and Taxation Code Section 6405. Section 6405 was amended by AB 1748 (2007) to raise the tangible personal property value exemption from \$400 to \$800 effective January 1, 2008.

Title 18
 California Code of Regulations
 AMEND: 1620
 Filed 04/23/2008
 Agency Contact: Rick Bennion (916) 445-2130

File# 2008-0317-02
BOARD OF PSYCHOLOGY
 SPE in Non-Mental Health Services

Currently, section 1387.3 does not provide adequate guidelines on how a trainee preparing for practice in non-mental health services can accrue the 3000 hours of supervised professional experience required for licensure. This proposed regulation would further define and make specific the criteria for accruing supervised professional experience for those trainees preparing to practice in non-mental health services.

Title 16
 California Code of Regulations
 AMEND: 1387.3
 Filed 04/24/2008
 Effective 05/24/2008
 Agency Contact: Kathy Bradbury (916) 263-0712

File# 2008-0313-01
**CALIFORNIA INTEGRATED WASTE
 MANAGEMENT BOARD**
 Mammalian Tissue Composting

This is the certificate of compliance filing of the California Integrated Waste Management Board (CIWMB) relating to the composting of mammalian tissue, previously approved by OAL as an emergency filing and subsequent readoption. The proposed regulations: (1) allow regulated composting as an emergency measure during declared state or local emergencies to handle unprocessed mammalian tissue as an alternative to rendering plants; and (2) allow research of the compost mammalian tissue for the purposes of obtaining data on pathogen reduction or other public health, animal health, safety, or environmental concerns.

Title 14
 California Code of Regulations
 AMEND: 17210.2, 17210.4, 17855.2, 17862, 17867
 Filed 04/25/2008
 Agency Contact: Robert Holmes (916) 341-6376

File# 2008-0418-02
**CALIFORNIA INTEGRATED WASTE
 MANAGEMENT BOARD**
 At Store Recycling and Recordkeeping

This is the second readopt of a prior emergency regulatory action (OAL file nos. 08-0117-01EE and 07-0718-04E) that established definitions and the requirements for certain store operators to follow when providing bins to collect used plastic carryout bags returned by customers and recycling these bags. These regulations also specify the recordkeeping and reporting requirements for the collection, transport, and recycling of plastic carryout bags to ensure statewide consistency in store operator records for the purposes of recycling of plastic bags. These regulations implement the At-Store Recycling Program Law that went into effect July 1, 2007.

Title 14
 California Code of Regulations
 ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5
 Filed 04/28/2008
 Effective 04/28/2008
 Agency Contact: Heather L. Hunt (916) 341-6756

File# 2008-0409-01

COMMISSION ON STATE MANDATES**Implementation of AB 1222**

The Commission on State Mandates is adopting and amending the captioned sections in order to implement statutory changes made by A.B. 1222 (Stats. 2007, Ch. 329). The changes are exempt from review by the Office of Administrative Law pursuant to Government Code Section 17527(g).

Title 2**California Code of Regulations**

ADOPT: 1183.081, 1183.131, 1183.30, 1183.31, 1183.32 AMEND: 1181.1, 1181.2, 1181.3, 1183, 1183.01, 1183.04, 1183.08, 1183.11, 1183.13, 1183.14, 1183.3, 1188.3

Filed 04/24/2008

Effective 04/24/2008

Agency Contact: Nancy Patton (916) 323-8217

File# 2008-0320-01

DEPARTMENT OF CORPORATIONS**Conform California's Franchise Rules to Federal Trade Commission's Franchise Rules**

The Department is amending its rules regarding the application for registration in order to incorporate the Federal Trade Commission's changes to its franchise rule and to incorporate the North American Securities Administrators Association's new disclosure document, the Uniform Franchise Disclosure Document (UFDD). The proposed amendments allow franchisors to use either the Uniform Franchise Offering Circular or the UFDD as their registration application until July 1, 2008, and require franchisors to use the UFDD on or after July 1, 2008.

Title 10**California Code of Regulations**

AMEND: 310.111

Filed 04/28/2008

Effective 04/28/2008

Agency Contact: Karen Fong (916) 322-3553

File# 2008-0317-05

DEPARTMENT OF FINANCIAL INSTITUTIONS**Acquisition of Securities**

In this regulatory action, the Department of Financial Institutions adopts regulations relating to a California state-chartered bank or trust company seeking approval from the Commissioner of Financial Institutions (Commissioner) to acquire its own shares. Specifically, the regulations set forth the required information that must be included in a bank or trust company application to the Commissioner for approval of the acquisition of its own shares. The regulations also include the factors the Commissioner shall consider in connection with

processing an application for acquisition by a bank or trust company of its own shares. These regulations implement Financial Code section 3359.

Title 10**California Code of Regulations**

ADOPT: 10.19900, 10.19901

Filed 04/29/2008

Effective 05/29/2008

Agency Contact:

Jennifer Rumberger (415) 263-8513

File# 2008-0425-01

DEPARTMENT OF FOOD AND AGRICULTURE**Light Brown Apple Moth Eradication Area**

This emergency regulatory action adds the county of San Benito as an additional eradication area with respect to the light brown apple moth (*Epiphyas postvittana*).

Title 3**California Code of Regulations**

AMEND: 3591.20

Filed 04/30/2008

Effective 04/30/2008

Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0318-04

DEPARTMENT OF INSURANCE**CEA Base/Supplemental Limits Programs**

The California Earthquake Authority maintained separate financing for its base-limits and optional-limits (also called, "supplemental limits") programs for providing earthquake insurance. This regulatory action ends the separate financing for the two programs and treats the financing of the two programs as one and the same. This action amends the description of the coverages available under both programs and removes language that restricts the merging of finances for the two programs.

Title 10**California Code of Regulations**

AMEND: 2697.6, 2697.61

Filed 04/30/2008

Effective 05/30/2008

Agency Contact:

Lisbeth Landsman-Smith (916) 492-3561

File# 2008-0317-04

DEPARTMENT OF MOTOR VEHICLES**Driving Under the Influence Program**

This regulatory action updates article 2.5 to reflect legislative revisions that have been made over the past four years. This includes the revision of two forms used in the program that are incorporated by reference.

Title 13
California Code of Regulations
AMEND: 120.00, 120.01, 120.02, 124.93, 124.95
REPEAL: 120.04
Filed 04/28/2008
Effective 05/28/2008
Agency Contact: Randi Calkins (916) 657-8898

File# 2008-0312-04
DEPARTMENT OF PESTICIDE REGULATION
Minimum Qualifications for Pest Control Advisers

This action amends the minimum educational standards for licensing as a Pest Control Advisor in order to make it possible for additional courses, projects, internships, cooperative work experience, independent study, a dissertation, and one year's work experience in pest management or production systems to be recognized and counted in fulfillment of the minimum course requirements and to allow an applicant to utilize certification as a crop adviser to meet the educational requirement.

Title 3
California Code of Regulations
AMEND: 6550
Filed 04/23/2008
Effective 04/23/2008
Agency Contact:
Linda Irokawa-Otani (916) 445-3991

File# 2008-0401-05
DEPARTMENT OF PUBLIC HEALTH
Requirements for Lead-based Paint Activities

These regulatory changes implement a new category of persons who may take paint samples, the "Sampling Technician." The regulations also raise the standard for lead-safe work practices.

Title 17
California Code of Regulations
ADOPT: 35004, 35005.1, 35031, 35088, 36050
AMEND: 35001, 35002, 35003, 35005, 35006, 35007, 35008, 35009, 35010, 35012, 35013, 35014, 35015, 35016, 35018, 35019, 35020, 35021, 35022, 35025, 35026, 35027, 35028, 35029, 35030, 35032, 35033, 35034, 35035, 35036, 35037, 35038, 35039, 35040, 35041, 35042, 35043, 35044, 35045, 35046, 35047, 35048, 35049, 35050, 35051, 35052, 35053, 35054, 35055, 35056, 35057, 35061, 35065, 35066, 35067, 35070, 35072, 35076, 35078, 35080, 35081, 35082, 35083, 35085, 35087, 35089, 35091, 35093, 35095, 35096, 35097, 35099, 36000, 36100 REPEAL: 35023
Filed 04/30/2008

Effective 05/30/2008
Agency Contact: Nancy Lightner (916) 323-3724

File# 2008-0410-01
FRANCHISE TAX BOARD
Special Rules — Sales Factor

This regulatory action provides that the numerator and denominator of the sales factor shall exclude interest and dividends from intangible assets held in connection with a treasury function of the taxpayer's unitary business as well as the gross receipts and overall net gains from the maturity, redemption, sale, exchange or other disposition of such intangible assets.

Title 18
California Code of Regulations
AMEND: 25137(c)(1)(D)
Filed 04/29/2008
Effective 05/29/2008
Agency Contact: Colleen Berwick (916) 845-3306

File# 2008-0417-04
OFFICE OF ADMINISTRATIVE LAW
Nonsubstantive changes to Form 400

The Office of Administrative Law is making various editorial corrections to the standard form 400.

Title 1
California Code of Regulations
AMEND: Appendix A
Filed 04/24/2008
Effective 04/24/2008
Agency Contact: Linda C. Brown (916) 323-8915

File# 2008-0312-02
OFFICE OF EMERGENCY SERVICES
Area Plans — Pesticide Drift Exposure Incidents

This regulatory action requires that pesticide drift exposure protocols be incorporated into area plans by administering agencies.

Title 19
California Code of Regulations
ADOPT: 2660 AMEND: 2720, 2723, 2724, 2725, 2726, 2728
Filed 04/23/2008
Effective 05/23/2008
Agency Contact: Jack Harrah (916) 845-8759

File# 2008-0422-05
OFFICE OF SPILL PREVENTION AND RESPONSE
Definitions — Contracting for Tank Vessels

This is the readoption of an emergency regulation concerning OSROs (Oil Spill Recovery Organizations) and allows them to get advance notification of tank vessels entering non-high volume ports.

Title 14
California Code of Regulations
AMEND: 815.05
Filed 04/28/2008
Effective 04/28/2008
Agency Contact:
Joy D. Lavin-Jones (916) 327-0910

File# 2008-0318-02
STATE ALLOCATION BOARD
Leroy F. Green School Facilities Act of 1998; Seismic Mitigation

AB 127 (2006) created the Kindergarten through University Public Education Facilities Bond Act of 2006 which was approved by voters (Proposition 1D). Proposition 1D authorized nearly \$200 million for seismic mitigation of the most vulnerable school buildings. This rulemaking action promulgates a definition of the most vulnerable buildings. It also provides that financial-hardship-qualifying school districts may have up to all of their otherwise obligated 50% share of the costs of these seismic mitigations paid for by the state. It exempts two expenses (costs of structural reports and costs of housing displaced students during construction) from funds a school district would otherwise be considered to have available to satisfy its share of cost. The rulemaking also amends a funding application form to add necessary seismic mitigation fund application provisions.

Title 2
California Code of Regulations
AMEND: 1859.2, 1859.61, 1859.81, 1859.82, 1859.83, 1859.202, 1866, Form SAB 50-04 (Rev. 01/08)
Filed 04/30/2008
Effective 04/30/2008
Agency Contact: Robert Young (916) 445-0083

File# 2008-0318-01
STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998; CTEFP
This is the certification of a deemed emergency (OAL File No. 07-0703-03 ER) which implemented the Career Technical Education Facilities Program (CTEFP) into the School Facility Program (SFP) regulations in accordance with AB 127, Chapter 35, Statutes of 2006.

Title 2
California Code of Regulations
ADOPT: 1859.190, 1859.191, 1859.192, 1859.193, 1859.193.1, 1859.194, 1859.195, 1859.196, 1859.197, 1859.198, 1859.199 AMEND: 1859.2, 1859.51, 1859.81, Form SAB 50-04 (Revised 01/08), Form SAB 50-05 (Revised 01/08), Form

SAB 50-10 (Revised 01/08)
Filed 04/29/2008
Agency Contact: Robert Young (916) 445-0083

File# 2008-0317-01
STRUCTURAL PEST CONTROL BOARD
Record Requirements/Fumigant Updates

The Structural Pest Control Board has made changes to Title 16, sections 1970, 1970.4(a) and 1973(b). Specifically, the changes proposed are to: (1) add a requirement that a log of each fumigation be forwarded to the primary contractor, where fumigation is performed by a subcontractor; and to (2) amend three forms, the Standard Structural Fumigation Log (Form 43M-47), Occupants Fumigation Notice and Pesticide Disclosure (form 43M-48) and the Notice of Re-Entry (Form 43-42). All three forms are currently printed in the CCR.

Title 16
California Code of Regulations
AMEND: 1970, 1970.4(a), 1973(b)
Filed 04/29/2008
Effective 05/29/2008
Agency Contact: Ryan Vaughn (916) 561-8730

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN NOVEMBER 28, 2007 TO APRIL 30, 2008

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1
04/24/08 AMEND: Appendix A
02/25/08 ADOPT: 48, 50, 52 AMEND: 55
01/29/08 AMEND: 1, 6, 90, and Appendix A (Std. Form 400)

Title 2
04/30/08 AMEND: 1859.2, 1859.61, 1859.81, 1859.82, 1859.83, 1859.202, 1866, Form SAB 50-04 (Rev. 01/08)
04/29/08 ADOPT: 1859.190, 1859.191, 1859.192, 1859.193, 1859.193.1, 1859.194, 1859.195, 1859.196, 1859.197, 1859.198, 1859.199 AMEND: 1859.2, 1859.51, 1859.81, Form SAB 50-04 (Revised 01/08), Form SAB 50-05

	(Revised 01/08), Form SAB 50-10	(Renumbered to 649.4),	650.1
	(Revised 01/08)	(Renumbered to 649.6),	651.1
04/24/08	ADOPT: 1183.081, 1183.131, 1183.30,	(Renumbered to 649.1),	651.2
	1183.31, 1183.32 AMEND: 1181.1,	(Renumbered to 649.14),	651.3
	1181.2, 1181.3, 1183, 1183.01, 1183.04,	(Renumbered to 649.13),	651.4
	1183.08, 1183.11, 1183.13, 1183.14,	(Renumbered to 649.34),	651.5
	1183.3, 1188.3	(Renumbered to 649.5),	652.1
04/10/08	AMEND: 1866, 1866.4.3, 1866.13, Form	(Renumbered to 649.39),	652.2
	SAB 40-22 (Rev. 10/07)	(Renumbered to 649.40),	653.1
04/09/08	AMEND: 18997	(Renumbered to 649.42),	653.2
03/28/08	ADOPT: 59630	(Renumbered to 649.2),	653.3
03/24/08	AMEND: 18735	(Renumbered to 649.41),	653.4
03/19/08	AMEND: 55300	(Renumbered to 649.37),	653.5
03/19/08	AMEND: 549.90	(Renumbered to 649.38),	653.6
03/19/08	AMEND: 18200	(Renumbered to 649.61),	654.1
03/03/08	AMEND: 1859.76, 1859.83, 1859.104.3	(Renumbered to 649.3),	654.2
02/25/08	AMEND: 549.80	(Renumbered to 649.43),	654.3
02/25/08	AMEND: 714	(Renumbered to 649.46),	654.4
01/07/08	AMEND: 1859.2, 1859.43, 1859.50,	(Renumbered to 649.44),	654.5
	1859.51, 1859.81, 1859.106	(Renumbered to 649.45),	654.6
01/07/08	AMEND: 18531.61	(Renumbered to 649.47),	655.1
01/03/08	ADOPT: 547.69, 547.70, 547.71	(Renumbered to 649.51),	656.1
	AMEND: 547.69 renumbered as 547.72,	(Renumbered to 649.52),	656.2
	547.70 renumbered as 547.74, 547.71	(Renumbered to 649.54),	656.3
	renumbered as 547.73	(Renumbered to 649.55),	656.4
12/26/07	AMEND: div. 8, ch. 54, sec. 54300	(Renumbered to 649.53),	656.5
12/19/07	ADOPT: 18413	(Renumbered to 649.56),	656.6
12/18/07	ADOPT: 1859.324.1, 1859.330	(Renumbered to 649.50),	656.7
	AMEND: 1859.302, 1859.318,	(Renumbered to 649.58),	656.8
	1859.320, 1859.321, 1859.322,	(Renumbered to 649.57),	657.1
	1859.323, 1859.323.1, 1859.323.2,	(Renumbered to 649.59),	657.2
	1859.324, 1859.326, 1859.328, 1859.329	(Renumbered to 649.60),	657.3
12/17/07	AMEND: 58700	(Renumbered to 649.62)	
12/17/07	AMEND: 18351		
12/13/07	ADOPT: 18531.2		
12/13/07	AMEND: 18530.4		
12/13/07	AMEND: 18421.2		
12/06/07	AMEND: 649, 649.1 (Renumbered to		
	649.15), 649.1.1 (Renumbered to		
	649.16), 649.2 (Renumbered to 649.12),		
	649.3 (Renumbered to 649.24), 649.7		
	(Renumbered to 649.35), 649.8		
	(Renumbered to 649.36), 649.9		
	(Renumbered to 649.7), 649.10		
	(Renumbered to 649.22), 649.11		
	(Renumbered to 649.8), 649.12		
	(Renumbered to 649.9), 649.13		
	(Renumbered to 649.23), 649.14		
	(Renumbered to 649.27), 649.15		
	(Renumbered to 649.11), 649.16		
	(Renumbered to 649.30), 649.17		
	(Renumbered to 649.31), 649.18		
	(Renumbered to 649.26), 649.20, 649.21,		
	649.22 (Renumbered to 649.10), 649.71		
	(Renumbered to 649.25), 649.72		
Title 3			
04/30/08	AMEND: 3591.20		
04/23/08	AMEND: 6550		
04/21/08	AMEND: 3700		
04/18/08	AMEND: 3434(b)		
04/16/08	AMEND: 3434(b) & (c)		
04/15/08	AMEND: 3433(b)		
04/08/08	AMEND: 3434(b)		
04/02/08	AMEND: 3433(b)		
04/02/08	AMEND: 3433(b)		
04/01/08	ADOPT: 821, 821.1, 821.2, 821.3, 821.4,		
	821.5 REPEAL: 784, 784.1, 784.2, 800,		
	800.1, 801, 802		
03/26/08	AMEND: 3434(b)		
03/21/08	AMEND: 3434(b)		
03/19/08	AMEND: 6620		
03/17/08	AMEND: 3434(b)		
03/17/08	AMEND: 3406(b)		
03/17/08	AMEND: 3700(c)		
03/13/08	AMEND: 6860		
03/12/08	AMEND: 3434(b)		

03/12/08	AMEND: 3406(b)	12/26/07	AMEND: 12002, 12122, 12202, 12203.2, 12222
03/05/08	AMEND: 3875		
03/04/08	AMEND: 3867	Title 5	
03/03/08	AMEND: 3591.20	04/21/08	ADOPT: 18134
02/22/08	AMEND: 3434(b)	04/21/08	ADOPT: 18134
02/21/08	AMEND: 6393	03/03/08	ADOPT: 9510.5, 9512, 9513, 9514, 9525 AMEND: 9510, 9511, 9515, 9516, 9517, 9518, 9519, 9521, 9522, 9523, 9524, 9527, 9528, 9529, 9530 REPEAL: 9517.1, 9520
02/11/08	AMEND: 3434(b)	02/28/08	ADOPT: 11969.10, 11969.11 AMEND: 11969.1, 11969.2, 11969.3, 11969.4, 11969.6, 11969.7, 11969.8, 11969.9
02/08/08	AMEND: 3591.20	02/25/08	AMEND: 41301
02/04/08	AMEND: 3434(b)	02/22/08	AMEND: 3051.16, 3065
01/29/08	AMEND: 3700(c)	12/20/07	ADOPT: 1202 AMEND: 1200, 1204, 1204.5, 1205, 1207, 1207.1, 1207.2, 1207.5, 1209, 1210, 1211, 1211.5, 1215, 1215.5, 1216, 1217, 1218, 1219, 1225
01/28/08	AMEND: 3433(b)		
01/28/08	AMEND: 4500	Title 8	
01/25/08	ADOPT: 6445, 6445.5, 6448, 6448.1, 6449, 6449.1, 6450, 6450.1, 6450.2, 6451, 6451.1, 6452, 6452.1, 6452.2, 6452.3(a), 6452.3(b), 6452.3(c), 6452.3(d), 6452.3(e), 6452.3(f), 6452.4, 6536(a), 6536(b)(1-3), 6536(b)(4) AMEND: 6000, 6400, 6450, 6450.1, 6450.2, 6450.3, 6452, 6453, 6502, 6624, 6626, 6784	04/11/08	AMEND: 7016(c)
01/24/08	AMEND: 1391, 1391.1	04/07/08	AMEND: 10116, 10116.1, 10117.1, 10118.1, 10119, 10120, 10121, 10136, 10137, 10225, 10225.1, 10225.2
01/22/08	AMEND: 3591.6	04/01/08	ADOPT: 3140, 3141, 3141.1, 3141.2, 3141.3, 3141.4, 3141.5, 3141.6, 3141.7, 3141.8, 3141.9, 3141.10, 3141.11, 3141.12, 3141.13, 3142, 3142.1, 3142.2, 3143, 3144, 3145, 3146 AMEND: 3000, 3001, 3009, 3094.2, 3120.6, 3137
01/22/08	AMEND: 3591.6	03/05/08	AMEND: 1504, 1597
01/22/08	AMEND: 3591.2(a)	03/05/08	AMEND: 3228
01/22/08	AMEND: 3591.5(a)	02/29/08	AMEND: 3270
01/18/08	AMEND: 3423(b)	12/31/07	AMEND: 3650
01/18/08	ADOPT: 3152	12/28/07	AMEND: 1604.24
01/11/08	AMEND: 3406(b)	12/11/07	ADOPT: 9767.16, 9813.1, 9813.2 AMEND: 9767.1, 9810, 9811, 9812, 9813
01/10/08	AMEND: 3433(b)	12/10/07	ADOPT: 13800
01/07/08	AMEND: 1180.3.1	12/04/07	AMEND: 3214, Figure E-1 of 3231, Plate B-17
12/26/07	AMEND: 3433(b)	11/29/07	ADOPT: 33485 AMEND: 32135, 32166, 32500, 32630, 32700, 32781, 32784, 32786, 33480, 61020, 61450, 61470, 61480, 81020, 81450, 81470, 81480, 91020, 91450, 91470, 91480
12/26/07	AMEND: 3963		
12/21/07	AMEND: 3434(b)	Title 9	
12/20/07	ADOPT: 606	03/06/08	AMEND: 10025, 10057, 10515, 10518, 10524, 10545, 10550, 10606, 11014, 11017, 11024, 13070
12/19/07	AMEND: 3700(c)	02/28/08	ADOPT: 7024.9, 7025.4, 7136.4, 7136.5, 7136.6, 7136.7, 7136.8, 7136.9, 7137, 7138, 7179.4, 7179.5 REPEAL: 7136.5
12/19/07	AMEND: 3433(b)		
12/10/07	AMEND: 3406(b)		
12/06/07	AMEND: 3589		
12/03/07	AMEND: 3434(b)		
11/29/07	AMEND: 3434(b)		
11/29/07	AMEND: 3591.2		
Title 4			
04/08/08	AMEND: 1467		
03/24/08	AMEND: 10177, 10178, 10181, 10182, 10187, 10188, 10189		
02/29/08	ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101		
01/22/08	AMEND: 8070, 8072, 8073		
01/10/08	AMEND: 1632		

02/13/08 ADOPT: 3100, 3200.010, 3200.020,
3200.030, 3200.040, 3200.050,
3200.060, 3200.070, 3200.080,
3200.090, 3200.100, 3200.110,
3200.120, 3200.130, 3200.140,
3200.150, 3200.160, 3200.170,
3200.180, 3200.190, 3200.210,
3200.220, 3200.225, 3200.230,
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